



# California's Due Process Crisis: Access to Legal Counsel for Detained Immigrants

The California Coalition for Universal Representation · June 2016



This report is a product of the work of the California Coalition for Universal Representation.

Its members include:

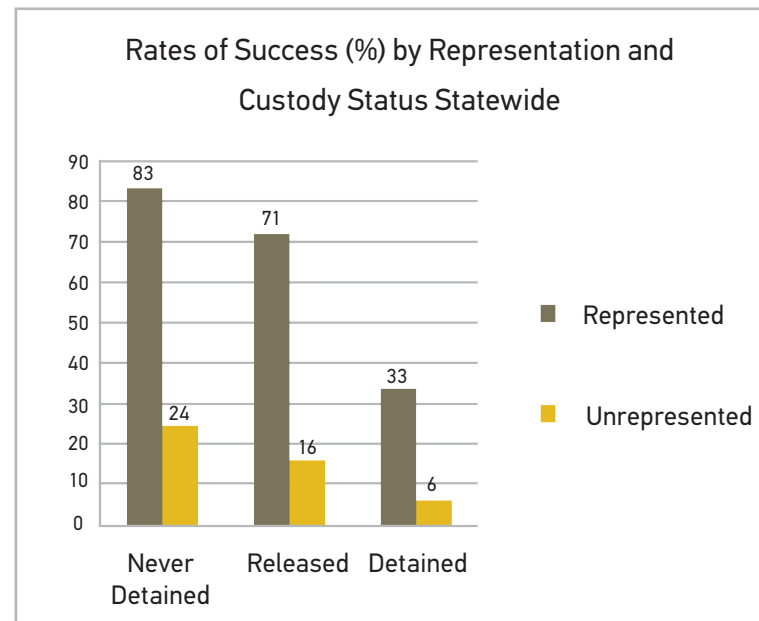
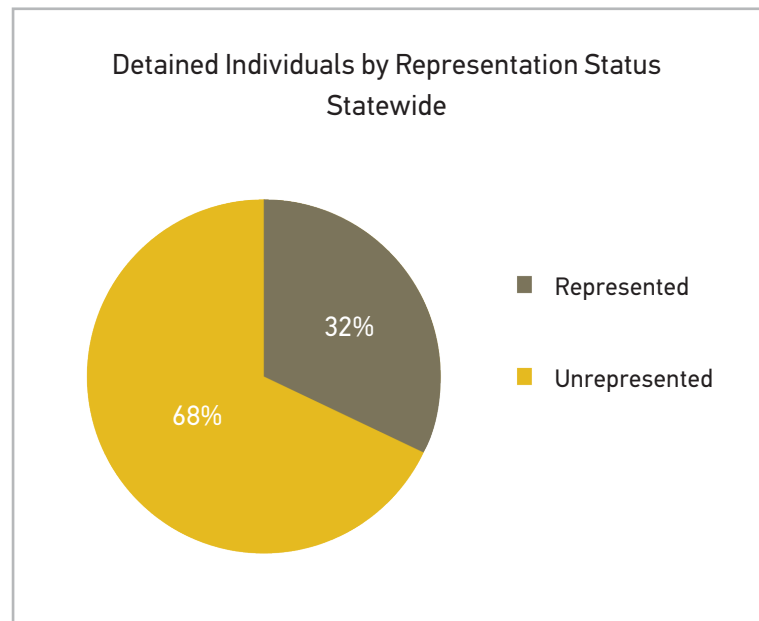
the American Civil Liberties Union of California, the Central American Resource Center, the California Immigrant Policy Center, the California Immigrant Youth Justice Alliance, the Center for Gender and Refugee Studies, the Center for Popular Democracy, Centro Legal de la Raza, Clergy and Laity United for Economic Justice, the Coalition for Humane Immigrant Rights of Los Angeles, Community Legal Services in East Palo Alto, the Immigrant Defenders Law Center, the Immigrant Legal Resource Center, the Immigrant Youth Coalition, the Interfaith Communities for Justice and Peace, the Lawyers Committee for Civil Rights, the National Day Laborer Organizing Network, the National Immigration Law Center, One Justice, Pangea Legal Services, Public Counsel, the Stanford Law School Immigrants' Rights Clinic, and the Vera Institute of Justice.

Special thanks to Marco Loera of the National Day Laborer Organizing Network for graphic design, to Caitlin Bellis, Liman Fellow at Public Counsel, and Stacey Strongarone of the Vera Institute for drafting, Andrew Powell of the Vera Institute for data analysis, and to Centro Legal de la Raza and Pangea Legal Services for client stories and photos.

# EXECUTIVE SUMMARY

California should create a publicly-funded program to provide appointed counsel to indigent detained immigrants in deportation proceedings. Immigration detention and deportation rupture California families, harm communities, and burden the state. Despite the grave consequences that these proceedings carry, there is no recognized right to government-appointed counsel for most immigrants. An examination of data over a three-year period reveals that **68% of detained immigrants in California are unrepresented**. Furthermore, the same data shows that **detained immigrants who had counsel succeeded *more than five times as often* as did their unrepresented counterparts**. Providing counsel to detained immigrants will keep loved ones together, employees working, and communities whole. It is both fiscally responsible and morally necessary for the state to defend its residents against detention and deportation.

These results come from examining data covering a three-year period, 2012-2015, and are consistent with several other studies of New York City (which, following release of the study of lack of representation there, implemented a universal representation system), Northern California, and the nation as a whole.



The human cost of detention and deportation is obvious, but also place huge financial burdens on the state. **The detention or deportation of a parent often means the loss of a breadwinner; immigration-related arrests cause household income to fall to *half* on average, and leave many households without anyone earning wages.** Almost half of all California children have

at least one immigrant parent, meaning that thousands of California families face the danger of children being placed in foster care upon the detention or deportation of a parent. Even children who do not enter foster care experience trauma with long-term health consequences, leading to poorer educational and health outcomes, and resulting in lower lifetime earnings. Other loved ones of people who are detained and deported also experience trauma from being separated that impacts their mental health, physical health, and ability to work. Additionally, when employees are detained or deported, businesses must bear the costs of losing their employees. **Turnover costs are regularly 20% of annual wages for workers earning less than \$50,000 and 16% of annual wages for workers earning less than \$30,000.** Deportation and detention-related employee turnover thus places a huge financial burden on California employers, especially given that non-citizens comprise a full 35% of California's workforce.

**California currently bears the costs of these detention- and deportation-related harms.** Providing counsel to detained Californians would significantly reduce these costs.

There were approximately 7,400 detained and unrepresented immigrants who had their cases heard in California immigration courts in 2015. Using a cost estimate of \$5000 per case, **an investment of \$37 million would ensure representation of every detained and unrepresented immigrant in California.**



# Introduction

California should create a publicly-funded pilot program to provide appointed counsel to indigent<sup>1</sup> detained immigrants in deportation proceedings.<sup>2</sup> Immigration detention and deportation rupture California families, harm communities, and burden the state. Despite the grave consequences that these proceedings carry, there is no recognized right to government-appointed counsel for most immigrants. An examination of data over a three-year period reveals that **68% of detained immigrants in California are unrepresented**. Furthermore, the same data shows that **detained immigrants who had counsel succeeded more than five times as often as did their unrepresented counterparts**. Providing counsel to detained immigrants will keep loved ones together, employees working, and communities whole. It is both fiscally responsible and morally necessary for the state to defend its residents against detention and deportation.

Our findings add to the growing body of evidence that legal representation matters. Because the federal government has failed to provide counsel for most noncitizens in removal proceedings, California must step in and act to protect its residents. Our society no longer questions the moral and constitutional duty to provide attorneys for individuals in criminal proceedings, and given the similarity both in form and in severity of the potential consequences, the moral imperative here is equally clear. It is also good policy: reducing the number of California residents who are detained and deported would help keep their children out of foster care, improve their health and educational outcomes, lessen disruptions to the economy, and reduce the number of households that face food and housing insecurity.

Findings from the data analysis shared below, along with an understanding of the nature of immigration proceedings, demonstrate the need to provide counsel to indigent immigrant detainees. New York City is leading the way in protecting its noncitizen community members by providing publicly-funded representation to all indigent and detained immigrants whose cases are heard there. California should follow this

groundbreaking example, and, indeed, go further, providing counsel for all detained Californians in removal proceedings statewide. We will discuss how the State of California will benefit from instituting such a program, and how a program like New York's would operate in the California context.

## Legal Representation Matters

A growing body of research has consistently found that legal representation makes a difference for immigrants in deportation proceedings. One such study, conducted in New York City, concluded that the “two most important variables affecting the ability to secure a successful outcome in a case . . . are having representation and being free from detention.”<sup>3</sup> The study further found that those who had counsel in their removal proceedings, whether detained or non-detained, succeeded approximately *six times as often* as their unrepresented counterparts.<sup>4</sup> The findings of that study compelled New York City to establish a representation program like the one proposed in this report.

Another, more recent study examined proceedings in the San Francisco Immigration Court over the course of a year and found that represented detained immigrants succeeded in their cases three times as often as those who appeared in court alone.<sup>5</sup> Additionally, a recent study of immigration bond hearings in California (where an immigration judge determines whether a detained person may be released on bond) found that “the odds of being





granted bond are more than 3.5 times higher for detainees represented by attorneys than those who appeared pro se, net of other relevant factors.”<sup>6</sup>

Finally, a recently published study looking at immigration courts nationwide over a six-year period found that represented detained immigrants succeeded almost ten times as often as their unrepresented counterparts.<sup>7</sup> After conducting a regression analysis, controlling for several key case attributes, the study concluded that

represented detained immigrants obtained relief (that is, asylum and related relief or cancellation of removal) almost three times as often, and termination of their cases (likewise a successful outcome) over four times as often as unrepresented detainees. Thus, the national study’s results are consistent with our own.

This report expands the scope of the California studies and narrows the focus of the national study in order to provide a snapshot of the impact of legal representation in immigration proceedings in California. **We find that 68% of immigrant detainees in California are unrepresented, as are 27% of non-detained immigrants in removal proceedings. Moreover, statewide and over a three-year period, represented detainees succeeded more than five times as often as their unrepresented counterparts. Lastly, non-detained and represented immigrants succeeded approximately four times as often as those who lacked counsel.** Given this data, California should provide the crucial safeguard of counsel to detained immigrants, who suffer from the lowest rates of representation.

## Methodology

Using data received from the Executive Office for Immigration Review (EOIR), we examined 110,131 cases in California immigration courts between 2012 and 2015.<sup>8</sup> Our analysis focused on how outcomes varied by custody status and representation status. In studying outcomes, we could only examine those cases that had concluded within the three-year period, which amounted to 55,145 cases, or about 50% of all California cases in the relevant period. For representation status, however, we analyzed all 110,131 cases. For both representation status and outcome, we examined these cases both at a statewide level and by venue. For venue, we grouped cases based on which of the three largest metropolitan centers the immigration court was located in or near: Los Angeles, San Francisco, and San Diego. We analyzed an “Other” category for courts not located near any of these three cities.

Importantly, we used the EOIR case coding to track representation, rather than analyzing this factor at a case-level. Any given removal case is comprised of several different stages, or proceedings, including at least one master calendar hearing, bond proceedings (for which an attorney may now enter a separate appearance and represent an individual for the purposes of bond only; however this is a recent change not reflected in our data), and an individual, or merits hearing. EOIR codes an individual as having had representation if she had a lawyer at any of these stages, regardless of whether the lawyer remained on the case for its entire duration. The authors of the national study of immigration proceedings found that this method of tracking artificially inflates representation levels by as much as 13.6%.<sup>9</sup> Therefore, it is likely that even more immigrants in California lack representation for the crucial portions of their cases (like merits hearings) than our results suggest.

## Antonio's Story

*Antonio is a 25-year-old Salvadoran father of three United States citizen children who came to the United States with his mother when he was 8 years old. Antonio was not aware that when he entered the United States, he and his mother were placed in removal proceedings and were supposed to have attended a court hearing in Texas. Antonio only learned of this when he was taken into immigration custody at the age of 22 after a misdemeanor arrest. At that time, Antonio was engaged to his now wife, Diana, and they had two young United States citizen sons. Antonio and Diana qualified for DACA but had been unable to meet with an attorney due to their limited financial resources, and so did not know that they qualified.*

*Antonio met an attorney from Oakland's Centro Legal de la Raza during a legal rights presentation and legal intake conducted at the detention facility he was held in. The attorney screened him for relief and informed him of his DACA eligibility. Antonio was scheduled for deportation the following day since he had had an outstanding deportation order from not having appeared at court when he was 8 years old (and unaware of the hearing). The attorney had to file an emergency motion to reopen his case and stay of deportation, which is the only reason that Antonio was not immediately deported. Antonio was released from ICE custody once the attorney prepared a packet of documents proving his length of time in the United States and proof of his education that made him DACA eligible. This packet would have been impossible for Antonio to prepare pro se from detention.*

*Antonio and Diana have since obtained deferred action based on their U visa application as Antonio was also the victim of a violent crime and cooperated with law enforcement, making him eligible for this form of relief; they will receive the visas themselves soon. This young family is now able to focus on their future and provide for their three children. This would not have been possible without legal representation, as Antonio would have been deported without ever having a chance to seek and obtain the relief that he and his family qualify for.*







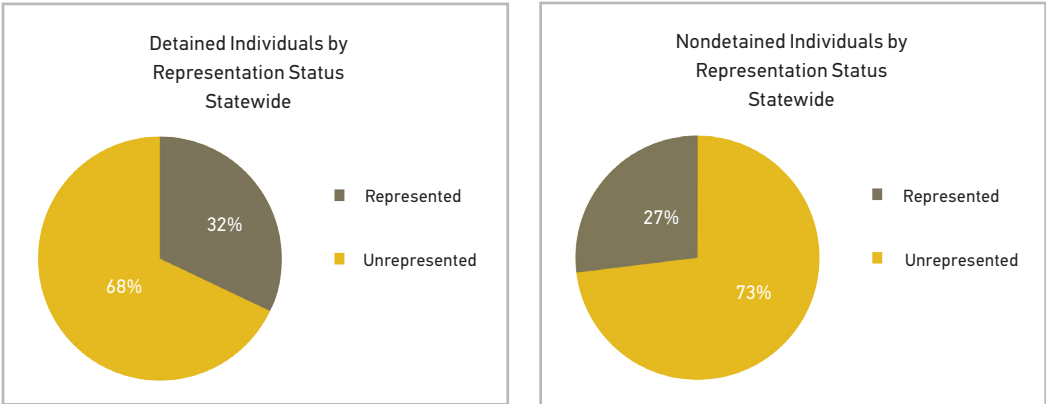
# Findings

Over the three-year period from 2012-2015, we found that 68% of all detained and 27% of all non-detained immigrants in California were unrepresented. See Table 1.

Statewide over the same three-year period, although only 6% of unrepresented and detained immigrants obtained successful outcomes in their cases, 33% of those who had lawyers did.<sup>10</sup> Meanwhile, a full 83% of immigrants who were represented and never detained succeeded in their cases, while only 24% of their unrepresented counterparts did. See Table 2. Additionally, we found that those who were once detained but subsequently released succeeded almost as often as those who had never been detained (71% of released and represented immigrants succeed as compared to 33% of detained and represented immigrants). As discussed above, another study found that having counsel greatly increased an immigrant’s chance of receiving a bond.<sup>11</sup> Therefore, providing counsel will likely increase the number of people who are released, and, in turn, increase their rates of success.<sup>12</sup>

We also broke down these numbers for each of the three general geographic clusters (Los Angeles, San Francisco, and San Diego). The ratios of representation and success rates were largely consistent with the state-wide findings.

Table 1.



## Los Angeles

Over the same three-year period, 68% of detained (almost 9,000 individuals) and 26% of non-detained immigrants (over 12,000 individuals) lacked counsel in Los Angeles. See Table 3. Detained and released immigrants in Los Angeles who were represented succeeded over five times as often as detainees who were not; among the non-detained, represented immigrants succeeded over four times as often as unrepresented immigrants. See Table 4.

## San Francisco

In San Francisco, 67% of detained and 28% of non-detained immigrants lacked counsel. See Table 5. Detained immigrants in San Francisco succeeded seven times as often when they had counsel, and non-detained (both those who were released and those who were never detained) represented immigrants succeeded about four times as often. See Table 6.

Table 2.

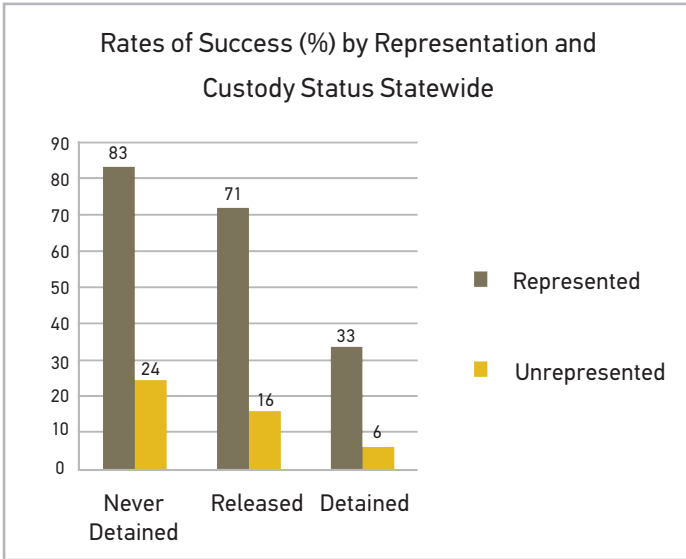
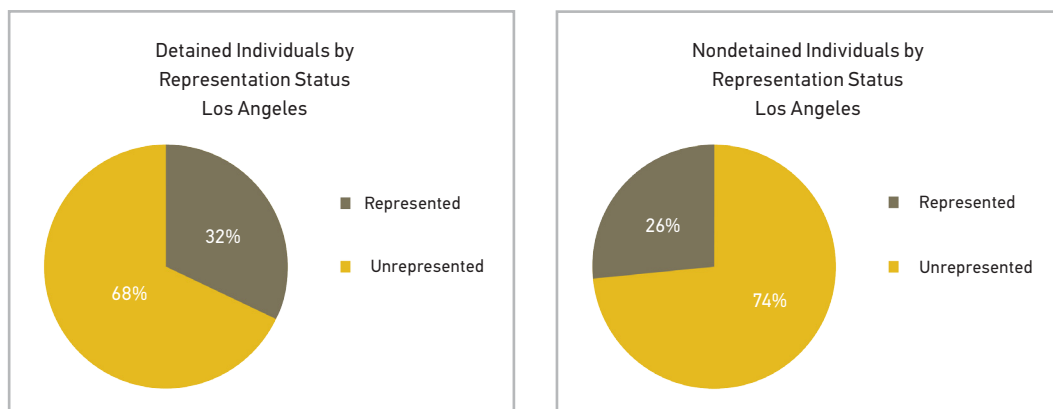


Table 3.

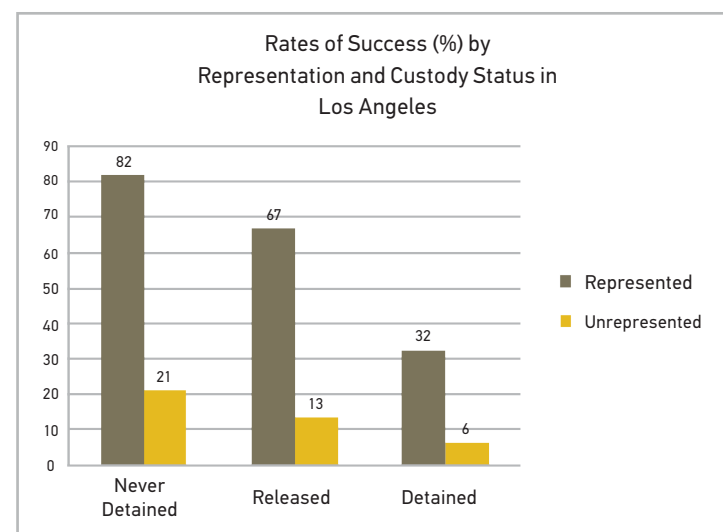


## San Diego

In San Diego, 63% of detained and 29% of non-detained immigrants lacked counsel. See Table 7. Immigrants who had counsel succeeded seven times as often when detained and over twice as often when non-detained. See Table 8.

The observations from our study are consistent with the other California studies and the national study that accounted for other relevant variables in their regression analysis. They are also consistent with the experience and observations of the nonprofit staff who serve detention centers around Los Angeles, San Francisco, and San Diego. Attorneys from these organizations report the difficulties in obtaining counsel for detainees, even those with strong cases. Additionally, these nonprofits see large numbers of individuals with strong claims for relief being deported because they could not adequately navigate the complex law while in custody. This serves as a strong indicator that a universal representation program is needed, both to enhance our understanding of the effect of counsel and best practices and to meet the overwhelming need our California communities have for legal representation for their loved ones in immigration custody.

Table 4.



## Why California Must Act

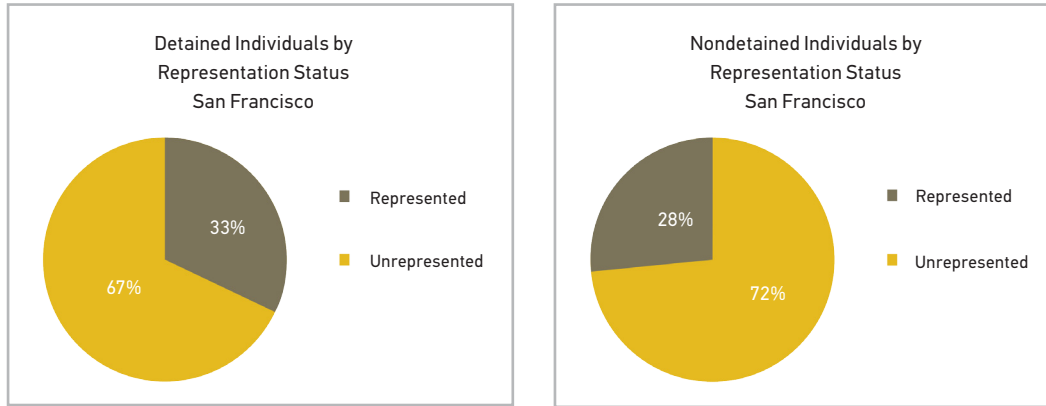
The data strongly suggest that members of our communities are deported simply because they are unable to secure counsel. Here, we go beyond the numbers to explain what is at stake for California.

### *Immigration Proceedings Entail Consequences as Severe as Criminal Proceedings*

When a person is threatened with a criminal conviction that could result in a loss of liberty, however brief, the state must provide for her defense. Meanwhile, noncitizens in deportation proceedings are routinely held in jails or jail-like conditions in remote facilities for months or even years, and yet *have no recognized right to government-appointed counsel*.<sup>13</sup> As the Supreme Court has acknowledged,<sup>14</sup> the consequences that stem from deportation are often more severe than those that follow a criminal conviction.<sup>15</sup> A person in removal proceedings faces the loss of her job, her home, and often *permanent*



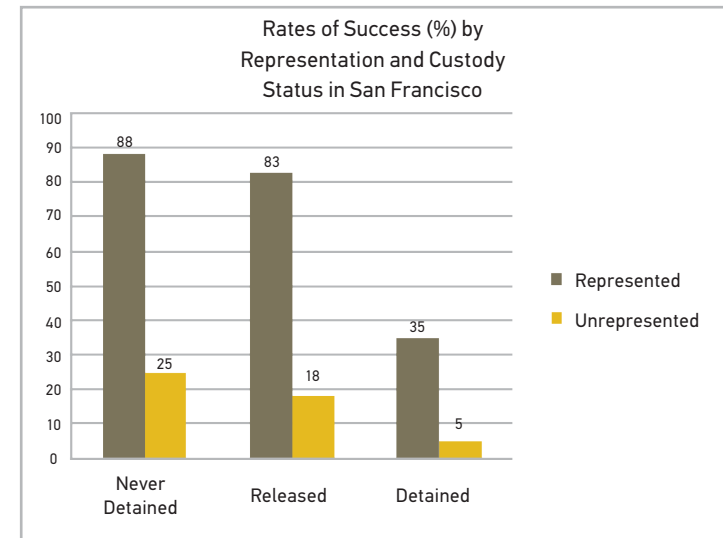
Table 5.



separation from her family and community.<sup>16</sup> Many others face persecution, torture, and death in their countries of origin. Detention itself is coercive and psychologically damaging, and lengthy periods of detention may lead detainees to abandon their cases, even if they might be eligible for lawful status.<sup>17</sup> A recent study found that there were 150 deaths in immigration detention between 2003 and 2015, and that the third leading cause was suicide.<sup>18</sup> Immigrants facing life-shattering consequences require the same protections as criminal defendants.

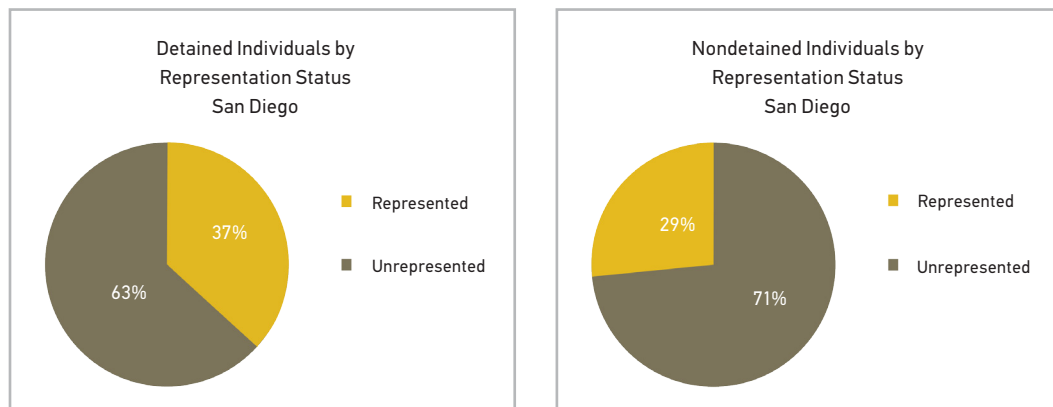
In addition to carrying similarly severe consequences, removal proceedings closely resemble criminal trials in several other respects. Immigration law is complex,<sup>19</sup> and claims for relief, while available, are difficult to identify and navigate. A successful defense requires the assistance of an expert well-versed in the law, just as, for example, a criminal defense attorney must know all of the intricacies of the rules of evidence. Additionally, in a removal proceeding, as in a criminal trial, the government has a trial attorney *in every case* representing its interests. Stated differently, the United States federal government gets a skilled immigration lawyer, but the indigent immigrant does not.

Table 6.



This is especially problematic as removal proceedings carry far fewer procedural protections than criminal trials, even beyond the absence of appointed counsel. To take just one example, many immigrant respondents do not appear in person, but instead by video teleconferencing from the detention centers where they are held, and while wearing the detention facility's uniforms;<sup>20</sup> those who do appear in person are shackled.<sup>21</sup> Additionally, detained immigrants face severe barriers to gathering evidence that would allow them to defend themselves, as they are often held hundreds or thousands of miles from their loved ones and communities, in facilities where phone calls are prohibitively expensive, and where they have at best limited access to the internet. For someone who must find a witness and ask that person to testify, or assemble evidence of the conditions that prevail in her country of origin, the isolation of detention makes adequately presenting a claim for relief a Herculean task. This is especially so for survivors of trauma, who may suffer from Post-Traumatic Stress Disorder or other mental health repercussions that make assembling evidence and testifying even more difficult, and, in some instances, re-traumatizing.<sup>22</sup>

Table 7

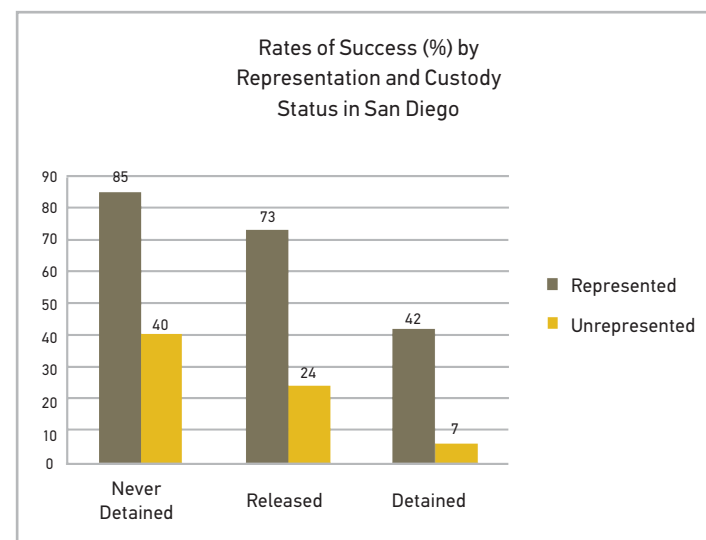


Despite the dire consequences the proceedings carry, and despite the complexity of the law and procedures involved, the vast majority of detainees go through this process alone.

### *Immigrants are Crucial to California's Families, Identity, and Economy*

California families, communities, and businesses all rely on their immigrant members. Over 10 million California residents, 27% of the state's population, are foreign-born, a proportion higher than any other state in the nation.<sup>23</sup> Forty-seven percent of the state's foreign-born residents are citizens, suggesting that immigrants who come to California choose to stay and build their lives here.<sup>24</sup> That figure also means that approximately 5.4 million California residents are noncitizens and therefore potentially subject to deportation. Almost half of all California children have at least one immigrant parent.<sup>25</sup> Families comprised of individuals with different citizenship statuses are common: 74% of all noncitizens live in a household that also includes citizens.<sup>26</sup> **The recent Stanford study found that among the detained individuals represented by nonprofit legal services providers in Northern California, half had resided in the United States for 10 years or more and 77% had family members living here.**<sup>27</sup>

Table 8.



California is also home to an estimated 2.6 million undocumented immigrants, representing nearly a quarter of the nation's undocumented population.<sup>28</sup> Nearly 50% of California's undocumented residents have lived in the state for more than 10 years.<sup>29</sup> Additionally, more than 13% of California's U.S. citizen children have at least one undocumented parent.

Immigrants also make up more than one third of California's workforce.<sup>30</sup> Immigrant households make up 27% of the total household income, and contribute approximately 31% of the state's GDP, a figure amounting to over \$650 billion.<sup>31</sup> The Stanford study found that 65% of the detained immigrants reflected in its survey of nonprofit legal services providers were employed prior to being detained.<sup>32</sup> Moreover, the recent study on bond proceedings in California, examining a sample of 565 detainees who had been detained six months or more, found that "90% of 565 survey respondents had been employed immediately prior to detention. . . . [T]heir average length of detention was 273 days at the time of the survey; assuming the same rate of pre-detention weekly earnings and hours worked

per week, their collective lost wages due to detention amounts to over \$11 million.”<sup>33</sup>

Immigrants are integral members of California’s communities, families, and economy. The impact of detention and deportation, then, hits California especially hard.

### *Immigration Detention and Deportation Separate Loved Ones, Harm Californians’ Health, and Disrupt the Economy*

When Californians are detained for immigration proceedings, the harm extends well beyond the detainees themselves. The detention or deportation of a parent often means the loss of a family’s breadwinner; immigration-related arrests cause household income to fall to *half* on average, and leave many households without anyone earning wages.<sup>34</sup> The most basic of these families’ needs are not met as a result – with children and spouses going hungry, struggling to remain in their homes, and in many cases, children becoming wards of the state.<sup>35</sup>

Detention and deportation harm the health of families. Children whose parents are in detention or are facing deportation experience anxiety, depression, and increased behavioral problems.<sup>36</sup> These emotional and behavioral problems in turn affect children’s performance in school,<sup>37</sup> and can have “detrimental” consequences for their “future successes, including . . . earnings as adults.”<sup>38</sup> Losing a parent to detention or deportation also causes many children to experience PTSD-related symptoms, and often results in related physical effects.<sup>39</sup> Likewise, the food insecurity that many children experience upon losing a parent to detention or deportation can lead to malnutrition. As an individual’s childhood health strongly impacts that person’s health as an adult, these childhood traumas carry long-term consequences. For example, children with poorer educational and health outcomes will go on to earn less than they otherwise would have, affecting the overall economic health of the state, as more residents experience hardship and as the tax base shrinks.<sup>40</sup> The costs of these harms are borne not just by these California families, but also by the larger community.

One of the cruelest consequences of deportation in California is the separation of children from their parents. In its 2011 report, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, the Applied Research Center (ARC) focused its research on 19 jurisdictions in six states, one of which was California. ARC found that approximately 6% of all children in foster care in Los Angeles and San Diego counties, including over 1,000 children in Los

Angeles County alone, were there because a parent had been deported.<sup>41</sup> Los Angeles, then, accounts for about a fifth of all children nationwide that ARC estimated were in foster care due to the deportation of a parent.<sup>42</sup> Just the base per diem paid to foster homes amounts to between approximately \$7,700 and \$9,500 per child per year.<sup>43</sup> **That means that in 2011, Los Angeles County and the State paid more than \$9.5 million in deportation-related foster care costs.**

Additionally, when employees are detained or deported, businesses must bear the costs of this turnover. A review of 30 previous studies of turnover costs showed that these costs are regularly 20 percent of annual wages for workers earning less than \$50,000 and 16 percent of annual wages for workers earning less than \$30,000.<sup>44</sup> Deportation and detention-related employee turnover thus places a huge financial burden on California employers, especially given that noncitizens comprise such a large proportion of California’s workforce.







California currently bears the costs of these detention- and deportation-related harms. Assuming that the success rates of represented immigrants remain relatively constant (in New York they have actually increased with the implementation of universal representation), providing counsel to detained Californians would significantly reduce these costs. Indeed, a paper examining the fiscal harms

of detention and deportation in New York concluded that a publicly-funded representation system for detained New Yorkers would *more than pay for itself*, generating \$1.9 million in savings for the state, and \$4 million in savings for New York employers.<sup>45</sup> California has an even higher proportion of noncitizen parents and employees; detention and deportation rates in California are equally high; and the success rates of represented immigrants in both states are similar. Therefore, the potential savings to California of implementing such a program are even greater.

## Momentum for Universal Representation is Building

Immigration reform is stalled at the federal level, and prosecutorial discretion is subject to shifting political winds. Nevertheless, there is an opportunity for state and local governments to act to protect their immigrant residents. New

York City is leading the way, and its innovative program provides a model for other state and local governments to follow. New York City began by funding a pilot of approximately 200 cases. Vera Institute of Justice acted as the administrator, and oversaw a competitive bidding process. Two organizations, Bronx Defenders and Brooklyn Defender Services, were chosen as institutional service providers. They met with clients before their first master calendar hearings in the immigration court, screening clients only for indigency and for desire for counsel. Thus, they use a public defense model, also known as universal representation. The pilot program proved so successful that the city expanded it to provide counsel to *every* detained indigent person facing deportation, and added a third service provider, Legal Aid Society. Indeed, clients of the New York program are projected to succeed in their cases ten times as often as detained and unrepresented immigrants.<sup>46</sup> That is an even greater comparative success rate than detained and represented immigrants experienced before implementation of the program (six times as often as their unrepresented counterparts).

California has also already seen positive developments in the movement towards universal representation. For example, in *Franco-Gonzalez v. Holder*, the district court ordered the federal government to provide immigrant detainees who are determined to be mentally incompetent in California, Arizona, and Washington with government-appointed counsel.<sup>47</sup> This decision has encouraged service providers in these states to increase their capacity in anticipation of receiving additional cases. The decision also means that the federal government covers the cost of providing counsel for this population of detained immigrants. Moreover, both the state of California and the federal government have also provided some funding for representation for unaccompanied minors.

These developments signal an increasing understanding of the importance of counsel in deportation proceedings here and nationwide. The next step is for California to establish a program providing counsel to detained immigrants, following a universal representation model.

## Reylla's Story

*Reylla was held by immigration authorities at the West County Jail in Richmond, CA for nearly two weeks, during which she had no contact with her 9-month old baby, Enzo Gabriel, who is a U.S. citizen. Reylla's baby lost one pound because he was not nursed and was not eating after his separation from his mother.*

*Reylla fled her home country, Brazil, nearly a decade ago in order to seek protection in the United States on account of politically and religiously motivated violence targeted against her. A devout Christian, she joined the Message of the Peace Church in South San Francisco, where she began her seminary schooling. She was and continues to be on her path to becoming a pastor and is an integral member of her community, where, in addition to working full-time, she is also a devoted volunteer.*

*In 2011, ICE officers raided Reylla's home. Reylla had an old deportation order because, lacking basic information in her native Portuguese, and fearful of returning to a place where she would face persecution, she did not appear for an immigration court hearing several years prior. Since the raid, Reylla complied with all of ICE's reporting requirements, but was nevertheless torn from her husband and baby when she appeared in compliance with ICE's request. Detention was shocking and cold, and the separation from her baby and husband caused Reylla to despair. She was ready to give up and accept permanent separation from her family just to get out of detention. Then, Reylla's husband was fortunate to meet attorneys who work for a San Francisco nonprofit. They helped Reylla obtain a stay of deportation with ICE and reunite her with her family and community. They also helped Reylla pursue the reopening of her prior order of deportation and begin her application for asylum, which are currently pending.*

*Many asylum seekers, like Reylla, do not understand the asylum process. Many suffer from PTSD, and many are fearful and distrustful of government proceedings, especially and understandably those who have been persecuted by members of the governments in their countries of origin. Competent counsel can guide asylum seekers through a scary and complicated process to safe homes in California communities.*



## Jesus' Story

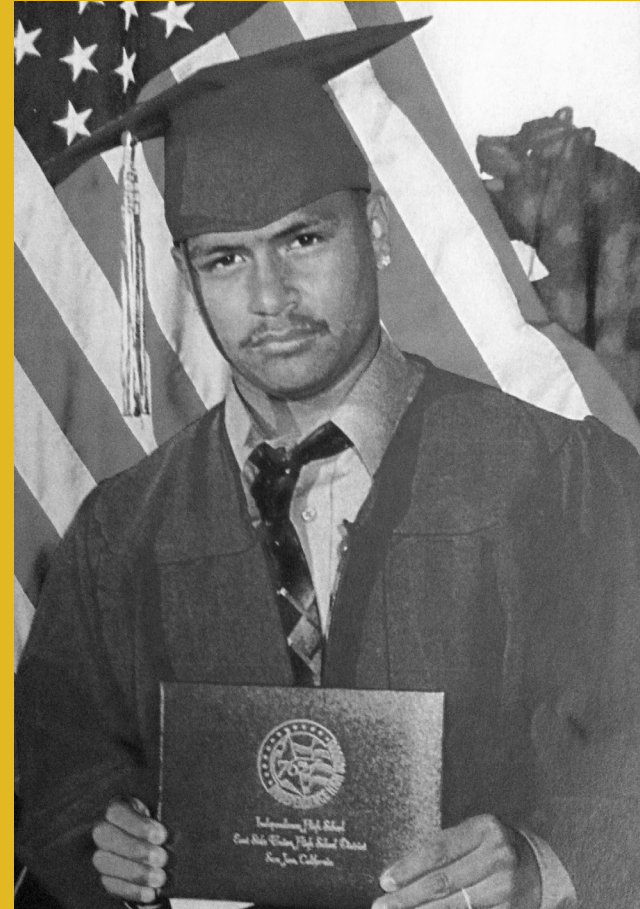
*Jesus is a 27 year-old DREAMer who arrived in the United States when he was just 4 years old. He attended kindergarten through high school in the United States, and graduated from high school in 2004, the first in his family to do so.*

*He was ordered deported in 1998, at age 11 because his family fell victim to ineffective assistance of counsel. This deportation order was executed in 2008, in his early 20s, and Jesus was deported to Mexico. He quickly returned to California, the only home he knew. Years later, he was again picked up at his workplace and detained. Jesus would have been deported immediately based on the prior deportation order he received due to the notario fraud he and his family suffered, but instead, he was fortunate to meet attorneys who work for Pangea Legal Services. Pangea Legal Services is an organization in San Francisco that provides free and low fee legal representation for immigrants in removal proceedings.*

*Though he otherwise would have been immediately eligible for relief under deferred action for childhood arrivals ("DACA"), the executive action that protects people like Jesus, his prior deportation in 2008 made getting Jesus out of detention and obtaining this relief complicated. Jesus felt frustrated and, at times, ready to give up. His family, including the many cousins, uncles, aunts, and his 17-year old U.S. citizen brother who wrote him letters of support, were deeply impacted by Jesus's detention. They missed him and wanted him home.*

*Over the course of about 15 months, Pangea helped Jesus get out of detention from Yuba County Jail, reopen his prior order of deportation, and obtain relief under DACA. After his DACA was granted Jesus stated, "14 months ago, this moment didn't feel possible." But, luckily, his Pangea attorneys made the seemingly impossible a reality: Jesus is now reunited with his family and community.*

*Notario fraud and ineffective assistance of counsel plague immigrant communities in California; Jesus's story provides but one example. If from the start Jesus had had competent counsel like the representation provided by the Pangea attorneys who later came to his assistance, his case would have been far less complicated. Moreover, had Jesus not had the support of his Pangea attorneys, he might have given up his claim to relief; detained and alone, he would not have been able to reopen his prior case and receive DACA.*





## The California Context

Several features of the California context argue for a statewide program, as opposed to only city- or county-based programs. First, immigrants in California are integrated into society throughout the state, and not just concentrated in large cities and counties. A state program would ensure that *all* Californians are protected, and go further in ensuring that the harms caused by detention and deportation are ameliorated. Second, though cases are heard in just six immigration courts in five cities in the state,<sup>48</sup> the detention facilities are nearly all located far from metropolitan centers; reaching clients presents a logistical challenge that statewide coordination could address. For example, the Mesa Verde facility is located near Bakersfield, approximately a two-hour drive from Los Angeles, but immigrants held there have their cases heard in San Francisco. Already, organizations located on opposite ends of the state have been coordinating to serve the hundreds of people detained in Mesa Verde, with Los Angeles-based organizations helping to do intakes and San Francisco-based organizations attempting to place some cases with pro bono counsel. Partnerships like this will continue to be crucial, and implicate a state-level response. Moreover, immigrants are often transferred from one detention center to another within the same state. Ensuring that detained Californians do not lose their representation just because DHS transfers them to a different facility likewise calls for a statewide program.

One major challenge in implementing a universal representation program in California will be arranging travel to and from the detention centers. The largest detention centers in California are located far from the urban centers where service providers have their offices. For example, attorneys from Public Counsel, in Los Angeles, reported travel times of approximately an hour and a half one way to get to the detention centers in Orange County. Similarly, attorneys from the Esperanza Immigrant Rights Project and the Immigrant Defenders Law Center often travel more than two hours each way to and from the Adelanto Detention Center. These travel times will increase the costs of providing representation, as time spent in transit consumes attorney time and as attorneys will have to be reimbursed for transportation costs.

Finally, service providers throughout California will have to expand in order to provide representation to all detainees. However, California is fortunate that its service providers have already increased their capacity in order to provide *Franco* representation and representation for unaccompanied minors. Their experiences with these programs will guide their implementation of a universal representation program. While the expansion will take time, California service providers already have the administrative expertise required to ensure successful implementation of a universal representation program.



# Developing a Representation Program for California

## **It is both feasible and cost-effective to develop a legal representation program for detained immigrants in California.**

The costs of such a program can be estimated by extrapolating from New York City's experience, as well as several California programs, and factoring in additional costs specific to the California context. In consultation with advocates, we can make an initial cost estimate of \$5000 per case on average.<sup>49</sup> At this projected rate, providing representation for all detained unrepresented immigrants statewide would cost approximately \$37 million per year (given that there were approximately 7400 such individuals in California in 2015). A similar program would cost \$18.55 million in Los Angeles (as there were about 3700 detained and unrepresented immigrants in L.A. in the same year); about \$7.55 million in San Francisco (assuming about 1500 individuals); and about \$5.55 million in San Diego (approximating 1100 individuals). Alternatively, like New York City, California could begin by implementing a pilot program. A pilot program whose results were carefully monitored and analyzed could provide further evidence of the necessity of counsel in removal proceedings and spur federal action. A pilot program providing representation to every unrepresented individual in Adelanto, the largest detention facility in California, over the course of a year, for example, would cost approximately \$11.4 million.

## **Based on lessons learned from New York City's program, as well as extensive discussions with California-based advocates, we have identified the following key components of a California program:**

- A universal representation institutional provider model, with screening only for income eligibility;
- Operation through contracts with established institutional immigration legal service providers that could handle the full range of deportation cases and that could minimize administrative costs;

- Coordination and cooperation with both DHS and EOIR to ensure efficient attorney-client communication, timely access to necessary documents, and a coordination of calendars;
- Provision of basic support services, including experts, translation, social work, mental health assessment, technical assistance, and other forms of investigative services;
- A consistent source of public funding;
- Oversight through a coordinating organization providing centralized management.

We believe that, employing the cost and program components outlined above, California will be in a position to launch an effective legal representation program to ensure fairness in our immigration courts and stability for our state's communities and families.

## Conclusion

California, home to the most immigrant residents in the nation, stands to gain significantly from a program to provide government-appointed counsel for those who need it most: indigent, detained immigrants in removal proceedings. We find that 68% of immigrant detainees in California (over 16,000 individuals) are unrepresented, as are 27% of non-detained immigrants (over 23,000 individuals). Overall, represented detainees succeeded over five times as often as their unrepresented counterparts. Non-detained and represented immigrants succeeded almost four times as often as those who were not detained but lacked counsel. Those who are successful reunite with their loved ones and communities. Many now recognize the harms caused by forcing people to go through deportation proceedings alone and unassisted. Momentum is building, but real federal reform is not on the immediate horizon. California must act now to protect its noncitizen community members.

## END NOTES

- <sup>1</sup> For the purposes of this report and the program it proposes, we define “indigent” as 200% of the Federal Poverty Level.
- <sup>2</sup> Now called “removal” proceedings; this report will use the terms interchangeably.
- <sup>3</sup> New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* 3 (Dec. 2011) available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf) (hereinafter NYIRS Year 1).
- <sup>4</sup> *Id.* Specifically, the study found that among non-detained immigrants, those represented had successful outcomes 74% of the time, while those unrepresented did only 13% of the time; in contrast, 18% of represented detainees were successful, while unrepresented and detained immigrants had a success rate of just 3%.
- <sup>5</sup> See Northern California Collaborative for Immigrant Justice, *Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California* 9 (Oct. 2014) (hereafter Stanford Study), available at <https://media.law.stanford.edu/organizations/clinics/immigrant-rights-clinic/11-4-14-Access-to-Justice-Report-FINAL.pdf>.
- <sup>6</sup> Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 Law and Society Review 117, 119 (2016). It is worth noting that the study examined *Rodriguez* bond hearings. In *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), the Ninth Circuit held that the government must provide bond hearings to a class of immigrant detainees in Southern California whose detention exceeded six months, and ordered that immigration judges conduct new bond hearings after every additional six months of detention, finding that prolonged detention without periodic review raises serious constitutional concerns. A detainee will receive a *Rodriguez* bond regardless of whether he or she was eligible for or denied bond previously. Also, unlike in the case of an initial bond hearing, at the *Rodriguez* stage, the government bears the burden of proving that the detainee will be a danger to society or a flight risk and that further detention is warranted. Therefore, *Rodriguez* bonds can be both harder and easier to secure than bonds at the initial stage.
- <sup>7</sup> Ingrid V. Eagly and Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 49 (2015).
- <sup>8</sup> The Vera Institute conducted an independent analysis of Executive Office for Immigration Review data for this Study. As such, none of the analyses constitute official EOIR statistics.
- <sup>9</sup> Eagly and Shafer, 164 U. Penn. L. Rev. at 17.
- <sup>10</sup> We defined successful outcome as any outcome other than removal (deportation) or voluntary departure. Often a form of relief that results in status, such as asylum or cancellation of removal, is not available by statute. Therefore, an outcome such as prosecutorial discretion or termination of the proceedings is the best outcome possible, and allows the immigrant to remain in the United States. Negotiating such a result implicates a lawyer’s skill, much as does plea bargaining.
- <sup>11</sup> See Ryo, *Detained*.

<sup>12</sup> As discussed above, a recent Ninth Circuit decision, *Rodriguez v. Robbins*, increases detained immigrants' opportunities to seek bond. Thus, immigrants in California have both an additional procedural protection, and an additional need for the assistance of counsel to vindicate their rights to it.

<sup>13</sup> There is an exception to this in Arizona, California, and Washington, where a federal court has ruled that the government must appoint counsel for mentally incompetent immigration detainees. *Franco-Gonzalez v. Holder*, No. 10–02211, 2013 WL 3674492 (C.D.Cal. Apr. 23, 2013).

<sup>14</sup> *Padilla v. Kentucky*, 559 U.S. 356, 368 (2010).

<sup>15</sup> Dana Leigh Marks, who has served as an immigration judge in San Francisco since 1987 and is president of the National Association of Immigration Judges referred to some cases in removal proceedings as “death penalty cases heard in traffic court settings,” because of the speedy court process and the consequences at stake, *available at* <http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/>

<sup>16</sup> *See* 8 U.S.C. § 1182(a)(9)(A)(i).

<sup>17</sup> *See* Susan Coutin, *Confined Within*, *Political Geography* 29, at 204 for accounts of detainees whose desire to appeal adverse legal decisions was eroded by the length and conditions of detention.

<sup>18</sup> Megan Granski, Allen Keller, and Homer Venters, *Death Rates among Detained Immigrants in the United States*, *Int. J. Environ. Res. Public Health* (2015), *available at* [www.mdpi.com/1660-4601/12/11/14414/pdf](http://www.mdpi.com/1660-4601/12/11/14414/pdf); *see also* ACLU, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention* (2015), *available at* [https://www.aclu.org/sites/default/files/field\\_document/fatal\\_neglect\\_acludwnnijnjc.pdf](https://www.aclu.org/sites/default/files/field_document/fatal_neglect_acludwnnijnjc.pdf) (finding multiple instances where failure to comply with medical standards was either a contributing factor or the cause of a death in detention).

<sup>19</sup> As the Ninth Circuit has observed, “the immigration laws have been termed second only to the Internal Revenue Code in complexity. A lawyer is often the only person who could thread the labyrinth.” *Baltazar-Alcazar v. I.N.S.*, 386 F.3d 940, 948 (9th Cir. 2004) (citing *Castro-O’Ryan v. I.N.S.*, 847 F.2d 1307, 1312 (9th Cir. 1987)).

<sup>20</sup> *See* Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 *Nw. U. L. Rev.* 933 (2015) (finding that immigrants appearing by video teleconference had lower rates of success, associated with an overall “depressed engagement with the adversarial process.”).

<sup>21</sup> Respondents appearing in San Francisco immigration courts are no longer shackled, thanks to a class action lawsuit that challenged the practice. *See* Cindy Chang, *Shackling to End at San Francisco Immigration Court*, *Los Angeles Times* (Jan. 23, 2014). However, elsewhere in California, including in Los Angeles, shackling continues.

<sup>22</sup> *See* Carol M. Suzuki, *Unpacking Pandora’s Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 *Hastings Race & Poverty L. J.* 235, 239 (2007).

<sup>23</sup> California Immigrant Policy Center, *Looking Forward: Immigrant Contributions to the Golden State* (2014), *available at* <https://caimmigrant.org/contributions.html>.



<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See Stanford Study at 9.

<sup>28</sup> Manuel Pastor, et. al., *What's at Stake for the State: Undocumented Californians, Immigration Reform, and Our Future Together*, Center for the Study of Immigrant Integration 4 (May 2013).

<sup>29</sup> *Id.*

<sup>30</sup> California Immigrant Policy Center, *Looking Forward: Immigrant Contributions to the Golden State 2014* 1 (2014), available at <http://www.caimmigrant.org/research-and-analysis/contributions-html/>.

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

<sup>32</sup> See Stanford Study at 9.

<sup>33</sup> Emily Ryo, email from Nov. 3, 2015, on file with the authors.

<sup>34</sup> *Id.* at 17; Sara Satinsky, et. al., *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families* 28-35 (2013), available at <http://www.familyunityfamilyhealth.org/>; Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement* 27-30 The Urban Institute (2010), available at [http://www.urban.org/UploadedPDF/412020\\_FacingOurFuture\\_final.pdf](http://www.urban.org/UploadedPDF/412020_FacingOurFuture_final.pdf) [hereinafter “Facing Our Future”].

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

<sup>36</sup> Heather Koball, et. al., *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents* 5 (Sept. 2015) (collecting previous studies), available at <http://www.urban.org/research/publication/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents>.

<sup>37</sup> *Id.* at 11.

<sup>38</sup> Joanna Dreby, *How Today's Immigration Enforcement Policies Impact Children, Families and Communities: A View from the Ground* 19 (Center for American Progress, 2012), available at <http://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf>.

<sup>39</sup> See, e.g., Satinsky, et. al., *Family Unity, Family Health* at 6-10.

<sup>40</sup> John H. Tyler and Magnus Lofstrom, *Finishing High School: Alternative Pathways and Dropout Recovery* 87 *Future of Children* (Spring

2009), available at <http://www.futureofchildren.org/futureofchildren/publications/journals/article/index.xml?journalid=30&articleid=49>

<sup>41</sup> Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, *Applied Research Center* 24 (Nov. 2011), available at <https://www.raceforward.org/research/reports/shattered-families>.

<sup>42</sup> *Id.* at 6

<sup>43</sup> Kerry DeVooght, Child Trends, and Dennis Blazey, *Family Foster Care Reimbursement Rates in the U.S.: A Report from a 2012 National Survey on Family Foster Care Classifications and Rates*, 9 Child Trends (2013) (showing California per diem reimbursement rates between \$21.04 and \$26.27 – multiplied by 365 days yields approximately \$7,700-9500 per annum per child).

<sup>44</sup> Heather Boushey and Sarah Jane Glynn, *There Are Significant Business Costs to Replacing Employees* 1-2 Center for American Progress (November 16, 2012).

<sup>45</sup> Center for Popular Democracy, *The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for all New Yorkers* 5 (2013).

<sup>46</sup> The Bronx Defenders, et. al., *The New York Immigrant Family Unity Project 2015 Pilot Successes*, on file with authors.

<sup>47</sup> *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG DTBX, 2013 WL 8115423, at \*1 (C.D. Cal. Apr. 23, 2013).

<sup>48</sup> U.S. Dep't of Justice Executive Office of Immigration Review, EOIR Immigration Court Listing, *available at* <http://www.justice.gov/eoir/sibpages/ICadr.htm#Top>. These courts are located in just five cities: Los Angeles, San Francisco, San Diego, Adelanto, and Imperial. The Imperial immigration court does not currently house any immigration judges.

<sup>49</sup> Our Coalition members' experiences with providing counsel to unaccompanied minors with federal, state, and local grant money, and to mentally incompetent detainees provided with representation under *Franco-Gonzalez v. Holder* inform this figure.



