

# Access to Justice for Immigrant Families and Communities

Study of Legal Representation  
of Detained Immigrants  
in Northern California

OCTOBER 2014

The logo for NCCIJ (Northern California Collaborative for Immigrant Justice) is displayed in a white box. It consists of the letters "NCCIJ" in a bold, blue, sans-serif font.

Northern California  
Collaborative for Immigrant Justice

## Northern California Collaborative for Immigrant Justice

The Northern California Collaborative for Immigrant Justice is a collaborative of immigration legal service providers and other organizations that represent and advocate for individuals and families whose lives are most directly affected by our nation's broken immigration system. These organizations provide advocacy and high quality legal representation to low-income immigrant communities. The collaborative includes the following organizations: Alameda County Public Defender's Office; API Legal Outreach; Asian Americans Advancing Justice-Asian Law Caucus; The Bar Association of San Francisco, Lawyer Referral and Information Service; Bay Area Legal Aid; California Immigrant Policy Center; Berkeley Law Policy Advocacy Clinic; Canal Alliance; Catholic Charities San Francisco; Center for Gender and Refugee Studies, U.C. Hastings College of Law; Central American Resource Center; Centro Legal de la Raza; Chinese for Affirmative Action; Community Legal Services in East Palo Alto; Dolores Street Community Services; East Bay Community Law Center; East Bay Sanctuary Covenant; Immigrant Legal Resource Center; Immigration Center for Women and Children; International Institute of the Bay Area; La Raza Centro Legal; La Raza Community Resource Center; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Legal Aid Society of San Mateo County; Legal Services for Children; One Justice; Pangea Legal Services; San Francisco Public Defender's Office; Social Justice Collaborative; Stanford Law School Immigrants' Rights Clinic; Transgender Law Center; the University of California, Davis, School of Law, Immigration Clinic; and USF Immigration Clinic.

## Advisory Board to the Collaborative

The following individuals serve on an advisory board to the Collaborative: Assistant Chief Immigration Judge Print Maggard, San Francisco Immigration Court; Christina H. Lee, Becker & Lee LLP (EOIR co-liaison to the San Francisco Immigration Court for the American Immigration Lawyers Association); Meredith Linsky, Director, American Bar Association Commission on Immigration; Jack W. Londen, Partner, Morrison & Foerster; Zachary M. Nightingale, Partner, Van Der Hout, Brigagliano & Nightingale; Luis J. Rodriguez, President, State Bar of California; and Jon B. Streeter, Partner, Keeker & Van Nest.

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*The recent surge of families migrating to the United States has cast a spotlight on the broken immigration system. Under current U.S. immigration laws and policies, immigrants in Northern California and across the country are not entitled to a lawyer unless they can pay for one or find someone to represent them for free. This report focuses on the Northern California immigrants who often face the most difficult challenges: those who are locked up while their deportation cases are decided by the courts. An overwhelming majority of these immigrants are forced to face deportation proceedings without a lawyer even though they are behind bars. This is true even for immigrants who have lived in Northern California with their families for most of their lives. When these immigrants lose their cases after fighting removal from behind bars and without counsel, they face lengthy or permanent separation from their Northern California families or return to violence in foreign countries.*

## Authors

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This report, and any errors, are solely the work of the authors.

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# Introduction

The recent surge of families migrating to the United States has cast a spotlight on the broken immigration system. Under current U.S. immigration laws and policies, immigrants in Northern California and across the country are not entitled to a lawyer unless they can pay for one or find someone to represent them for free. This report focuses on the Northern California immigrants who often face the most difficult challenges: those who are locked up while their deportation cases are decided by the courts. An overwhelming majority of these immigrants are forced to face deportation proceedings without a lawyer even though they are behind bars. This is true even for immigrants who have lived in Northern California with their families for most of their lives. When these immigrants lose their cases after fighting removal from behind bars and without counsel, they face lengthy or permanent separation from their Northern California families or return to violence in foreign countries.

Every day in Northern California, hundreds of immigrants are locked up while the federal immigration authorities conduct removal proceedings to deport them from this country.<sup>1</sup> For these immigrants, deportation can mean permanent separation from children and spouses or return to a foreign country where they face violence or torture. Despite the high stakes, the U.S. immigration system does not provide lawyers to immigrants who cannot afford them.<sup>2</sup> As a result, the rate of legal representation for immigrants who are locked up while in removal proceedings is abysmally low. At the same time, the number of deportations across the country and in Northern California has skyrocketed: 271,279 proceedings were initiated in the nation's immigration courts in fiscal year 2013.<sup>3</sup> The result is a crisis in the largest immigration courts, including the San Francisco Immigration Court, which has a backlog of over 25,000 cases pending as of June 2014.<sup>4</sup> As the report describes below, large numbers of individuals—including those with longstanding family and community ties—face deportation from Northern California without the help of a lawyer.

Unlike criminal defendants, who are constitutionally entitled to a lawyer even if they are charged with minor offenses like shoplifting, the federal government has taken the position that immigrants facing deportation generally do not have the right to counsel unless they can pay for a lawyer or find someone to represent them for free.<sup>5</sup> An immigrant who has lived in Northern California for most of his life can face permanent banishment from his family and community because he is behind bars and without counsel to help him navigate the complexities of the immigration legal system.

This report focuses on immigrants who are locked up during their removal proceedings because they are the least likely to be represented by counsel and face the greatest barriers to representing themselves in their own removal proceedings. Like other unrepresented individuals facing removal, detained immigrants must navigate the immigration laws—which are extraordinarily complex—on their own. However, they face additional—often insurmountable—barriers because they are behind bars. Detained immigrants cannot work to pay for their own representation. While locked up, they suffer from limited access to legal materials, restrictions on outside visits from family and friends, and limitations on phone calls and mail.<sup>6</sup> When these immigrants are forced to represent themselves, the already-overburdened immigration court system is further impacted because immigration judges must spend more time on their cases. On behalf of the National Association of Immigration Judges (NAIJ), Judge Dana Marks of the San Francisco Immigration Court has written: “NAIJ strongly endorses initiatives which increase the likelihood that respondents in Immigration Court proceedings are represented by attorneys.”<sup>7</sup>

The nation’s flawed deportation system—which imposes removal on many of Northern California’s immigrants without giving them access to counsel—has far-reaching effects on Northern California’s families and communities. Northern California includes several counties with the top ten highest percent of foreign-born residents in California, including Santa Clara County, San Mateo County, San Francisco County, Monterey County, and Alameda County.<sup>8</sup> Deportation affects not only the immigrant who is in proceedings, but also his family members, who may be U.S. citizens or lawful permanent residents. Our survey of Bay Area nonprofits providing legal services to immigrants who have been locked up reveals that over 50% of the immigrants had lived in the United States for at least ten years or more. 77% of detainees had family members living at home in the United States, and 65% of them were employed before they were put into deportation proceedings.

The deportation of a family’s breadwinner or primary caregiver has devastating consequences for the spouse and children who depend on his earnings, including harm to their financial, educational, physical, and mental wellbeing.<sup>9</sup> Deportation of a parent can cause children to enter the child welfare system, and result in children suffering lasting psychological harm that impacts their long-term economic and social stability.<sup>10</sup> These social and economic costs of deportation are largely borne by Northern California’s counties, which administer public health, education, and social services.

New York City has recently become the first city to fund the full representation of detained immigrants,<sup>11</sup> after two extensive reports by the Katzmann Study Group studying and advocating for such representation.<sup>12</sup> While California and cities like San Francisco have started to recognize the acute challenges that recent child migrants from Central America face—through recently-announced programs to fund legal representation for them—no program currently exists to fully represent detained immigrants in Northern California.

This report describes the first studies of the extent and effect of legal representation for Northern California’s immigrant detainees. The report summarizes the findings of two studies we

conducted. The first study examines available data from the Executive Office of Immigration Review (EOIR)—which includes San Francisco’s Immigration Court—to analyze the effect of representation on case outcomes for detainees. In the second study, we surveyed every Northern California nonprofit organization that provided low- or no-cost representation to more than five detained adult immigrants before the San Francisco Immigration Court over approximately the past year. The survey results document what Northern California immigrant families already know. Local nonprofits are working at full capacity but still only have the resources to provide services to a very small number of immigrant detainees.

The report concludes by proposing a pilot program to provide additional representation to Northern California’s detained immigrants as quickly as possible, based on currently available private and public funds. The proposed pilot also provides staffing and support to engage in the process of securing longer-term public funds to provide representation to all of Northern California’s detained immigrants.

# Key Findings

- ▶ **The overwhelming majority of detained immigrants in removal proceedings before the San Francisco Immigration Court were not represented by counsel.**  
Roughly 2/3 of detained immigrants had no legal representation at any point in their removal proceedings.
- ▶ **Represented detainees were at least three times more likely to prevail in their removal cases than detainees who were not represented by counsel.**  
Based on our analysis of all individuals detained in a year-long period, detained individuals without counsel only prevailed 11% of the time. By contrast those with lawyers prevailed 33% of the time.
- ▶ **Over 50% of detainees represented by the surveyed nonprofits had lived in the United States for at least ten years or more. 77% of detainees had family members living at home in the United States. 65% of detainees were employed prior to being placed in detention.**
- ▶ **Detainees represented by the nonprofits we surveyed won their deportation cases 83% of the time.**  
This success rate stands in stark contrast to the results of the Executive Office of Immigration Review (EOIR) study, in which detained individuals without counsel only prevailed 11% of the time.<sup>13</sup>
- ▶ **Detainees represented by the surveyed nonprofits were granted bond over 71% of the time, in cases where bond was requested.**  
This means that the detainees were released and could fight their cases from home with the support of their families, while employed, and with the ability to more easily access documents helpful to their immigration cases.

# Background

## Deportation and Detention in Northern California

Over approximately the past year,<sup>14</sup> the Department of Homeland Security (DHS) detained 4,152 immigrants under the jurisdiction of the San Francisco Immigration Court while DHS pursued their deportation.<sup>15</sup> These people—who included longtime lawful residents of the United States—were not detained because they were facing criminal charges. Rather, DHS incarcerated them while their deportation cases were pending in immigration court.<sup>16</sup> Some of these individuals face detention for many months while their immigration cases are resolved.<sup>17</sup>

### Immigration detention is jail.

In Northern California, DHS currently holds most detainees in three county-run facilities: the Yuba County Jail in Yuba, the Rio Cosumnes Correctional Center (RCCC) in Sacramento, and the West County Detention Facility in Richmond.<sup>18</sup> Together, these three facilities had an average total population of 599 immigrant detainees per day in fiscal year 2014.<sup>19</sup> Immigration detention means incarceration in jail facilities with barbed wire and cells, alongside others serving time for criminal convictions.<sup>20</sup> Detainees held at these facilities wear prison uniforms and face restrictions on their visitation, movement, meals, education, phone access, and recreation. Before detainees are transported to immigration court for hearings, ICE officials wake them up very early in the morning—sometimes as early as 2 a.m.—and some detainees have no idea where they are going. They may be subject to solitary confinement or other restrictions. Human rights organizations have documented problems with detention conditions, such as the excessive use of restraints and lack of access to healthcare and exercise.<sup>21</sup> One attorney we interviewed reported that her detained clients only see a few hours of daylight per day. In San Francisco, with the help of pro bono counsel, a class of detainees has challenged DHS's practices restricting their ability to make telephone calls from detention.<sup>22</sup>

### To stay in the United States with their families, immigrants detained in Northern California must navigate complex and intricate immigration laws and procedures.

For many detainees, the immigration removal proceeding is a complicated, multiple-step process involving many federal agencies, numerous immigration statutory and regulatory sections, voluminous agency and federal case law, and detailed factual evidence from the United States and

abroad. It is no surprise that the immigration statute has been ranked “second only to the Internal Revenue Code in complexity.”<sup>23</sup>

In the typical case, DHS starts immigration removal proceedings against an immigrant by filing a Notice to Appear (NTA) in immigration court.<sup>24</sup> This is the point when DHS usually makes a decision as to whether to detain the immigrant. At the immigrant’s first hearing—called a master calendar hearing—the immigrant can challenge DHS’s charges by arguing that he should not have been placed in removal proceedings. The legal arguments involved here can be very complex, and involve precedent from the Ninth Circuit Court of Appeals and the U.S. Supreme Court.<sup>25</sup> At around the same time, the noncitizen can separately request that the immigration judge reconsider DHS’s decision to detain him, and ask the judge instead to grant release on bond, a legally and factually detailed process that typically involves testimony and the submission of written testimony and documents proving residence, employment, family ties, and rehabilitation.<sup>26</sup> If the immigration judge decides to continue to detain the immigrant—or if the immigrant cannot afford to pay bond—he stays in detention while he fights his case.

In cases where the immigrant does not have a legal challenge to DHS’s charges or where he cannot convince the immigration judge that the charges are legally flawed, the immigrant may then request a range of discretionary relief from removal, including, but not limited to, asylum, cancellation of removal, and adjustment of status—types of relief available to individuals fleeing persecution, those with longstanding ties to the U.S., and those with U.S. citizen or lawful permanent resident family members.<sup>27</sup> Each of the available types of relief requires the immigrant to establish legal eligibility—another potentially complicated legal inquiry—as well as establishing that he merits relief based on the facts.<sup>28</sup> The factual investigation required for these types of relief encompasses obtaining witness declarations from family members, employers, friends, religious leaders, and others; research on the conditions in the immigrants’ country of origin; paper records like medical, employment, and tax records; and expert statements from psychologists, doctors, and social scientists. Successful applications can be accompanied by hundreds of pages of supporting factual evidence. In some cases, the immigrant may also be eligible to apply for relief to a different agency, U.S. Citizenship and Immigration Services (USCIS), if the immigrant can demonstrate he was a victim of crime or domestic violence, or if he entered the U.S. as a child and completed his education here.<sup>29</sup> After proceedings before an immigration

### ***Immigrants may give up strong cases because they cannot bear to be locked up.***

*Because of how difficult immigration detention is—particularly for immigrants with family or who have previously suffered torture or abuse—immigrants may give up strong cases simply to get out of detention. One federal court case recounts how an asylum-seeker agreed to her removal after seventeen and a half months in detention, saying that the detention was, in her words, “affecting me physically and destroying me mentally.” Gomez-Zuluaga v. Atty. Gen., 527 F.3d 330, 339 n.4 (3d Cir. 2008).*

judge in San Francisco, the immigrant can appeal to the Board of Immigration Appeals (BIA), an administrative reviewing body, and potentially the Ninth Circuit Court of Appeals.<sup>30</sup> The entire process can last months and even years.<sup>31</sup>

For detainees in Northern California, removal proceedings involve multiple hearings before a San Francisco immigration judge in a courtroom. Detainees are not entitled to lawyers as a matter of course. They must pay for a lawyer or find pro bono help if they want legal counsel.<sup>32</sup> By contrast, DHS, the agency that serves the prosecutorial function in removal proceedings, is represented by a government attorney. For unrepresented immigrant detainees, the immigration judge who decides the case, an employee of the Executive Office of Immigration Review (EOIR) who wears a robe and assumes the judicial role in the proceedings, may be the only person who reviews the detainee's case. But immigration judges are hampered in their ability to do so because they are extremely overburdened and carry huge caseloads. In fiscal year 2014, for instance, eighteen San Francisco immigration judges faced 23,969 pending cases.<sup>33</sup> Immigrant detainees who are not represented reduce the efficiency of these already overburdened immigration judges. Immigration Judge Dana Marks of the San Francisco Immigration Court explains that, when an immigrant detainee lacks legal representation, immigration judges may "use valuable time and resources figuring out the facts and the law of the case."<sup>34</sup> In a recent survey of the nation's immigration judges, 92% of the judges agreed that "When the [immigrant] has a competent lawyer, I can conduct the adjudication more efficiently and quickly."<sup>35</sup> Representation "affects the efficiency of adjudicative proceedings."<sup>36</sup>

## **DHS detention and deportation of immigrants has a profound effect on Northern California immigrant families and communities.**

Many of the individuals that ICE detains and tries to deport from Northern California have deep and longstanding ties to Northern California families and communities. Some are lawful permanent residents. Those who are undocumented are likely to have U.S. citizen children and live in "mixed-status" families with some members who are U.S. citizens, others who are lawful residents, and still others without immigration status.<sup>37</sup> Northern California includes several counties with the top ten highest percent of foreign-born residents in California, including Santa Clara County, San Mateo County, San Francisco County, Monterey County, and Alameda County.<sup>38</sup> For example, San Francisco's adult foreign-born population comprises nearly 40% of the city.<sup>39</sup> Foreign-born individuals make up 39% of the population of the City of San Jose<sup>40</sup> and over 35% of the population of Santa Clara County.<sup>41</sup> Many of these individuals have longtime ties to the Bay Area. One recent study of San Mateo County found, for example, that "[t]he median length of time that [foreign-born residents] had lived in [the county] was 14 years."<sup>42</sup>

## **Detention and deportation of Northern California's immigrants causes family separation and strains city and state support networks.**

The deportation and detention of an immigrant with Northern California family ties materially affects the economic, emotional, and physical wellbeing of children and spouses in Northern California communities, many of whom are U.S. citizens and lawful permanent residents. Detention and deportation of a family's primary wage earner or primary caregiver has a predictable consequence for family members. A recent report concluded that immigration-related arrests cause household income to fall to half on average, and leave one-fourth of households without anyone earning wages.<sup>43</sup> The economic realities that hit when a household's main earner is deported translate into increased crowding in living quarters, alarming food scarcity, and poorer health outcomes for those family members left behind.<sup>44</sup> The Urban Institute's 2010 study of families of detainees found that 28.3% of families suffered from insufficient food access after six months; they experienced hunger and could not afford to eat.<sup>45</sup> More than 80% ran out of food and did not have the money to get more.

If both parents are deported, children may end up in the child welfare system. The American Immigration Council estimated that in 2011, 5,100 children with a detained or deported parent became wards of the state.<sup>46</sup> Even when one parent is able to retain custody of children, removal shatters families' emotional bonds. Human Impact Partners noted in its report documenting data from extensive interviews with non-citizens and their families that detention and deportation deeply damage familial relationships.<sup>47</sup> An Urban Institute study found that in the first six months after an immigration arrest affecting their parents, two out of three children demonstrated changes in eating and sleeping habits, more than half cried more and were more afraid, and over a third were more withdrawn, clingy, angry or aggressive.<sup>48</sup> Children who witnessed their parents' arrest exhibited more drastic behavioral changes.<sup>49</sup> Behavioral challenges like aggression and withdrawal negatively affect a child's school readiness and social adjustment, which can have longer-term consequences for the child's literacy skills, employment prospects, and mental health.<sup>50</sup>

## **DHS detention and deportation practices in Northern California harm immigrants fleeing persecution abroad.**

Under current immigration law, an immigrant who comes to the United States fleeing persecution abroad is often detained while his or her case is resolved in the San Francisco Immigration Court. Removal proceedings in these cases are a matter of life and death, because individuals face threats of torture and death if deported. The nonprofits we surveyed have represented lesbian, gay, bisexual and transgender (LGBT) individuals who were attacked and threatened because of their sexuality; women escaping domestic abuse whose claims were ignored by the police abroad; and Central American refugees fleeing gang violence. Amnesty International has found that asylum seekers "may be detained for months or even years as they go through deportation

procedures that will determine whether or not they are eligible to remain in the United States.”<sup>51</sup> Detention worsens these individuals’ already fragile mental states, resulting in even less capacity to handle the challenges of removal proceedings. Medical research confirms that detention of asylum-seekers results in high levels of psychological distress, exacerbated by inadequate mental health services in immigration detention facilities.<sup>52</sup> These and other individuals may face removal proceedings and detention when they try to make their claim for asylum or other protection from persecution. Nevertheless, like other immigrants in removal proceedings, asylum seekers and others fleeing persecution are not entitled to attorneys unless they can pay for it themselves or find a pro bono lawyer.

# Research

## Methodology

### Executive Office for Immigration Review (EOIR) Data Set

Data for the EOIR data set was obtained through a Freedom of Information Act (FOIA) request covering all removal cases in which an Immigration Judge made a final decision at the San Francisco Immigration Court during the time period between **March 1, 2013** and **February 28, 2014**.

*Our study is of actual EOIR data, and does not reflect a randomized experiment relating to representation. Our conclusions are based on case outcomes in cases where individuals were represented by counsel, as compared to outcomes in cases without counsel.*

### Nonprofit Removal Defense Provider Survey Data Set

Data for the nonprofit removal defense provider data set was drawn from a survey of nonprofits in Northern California that provided representation, at low cost or no cost, to at least five detained immigrants in removal proceedings in San Francisco Immigration Court, during the time period between **April 1, 2013** and **April 1, 2014**.

*The data set is necessarily affected by the intake processes of each of the surveyed nonprofits, each of which employ different criteria for selecting cases for representation. Our analysis of the survey data does not take into account the potential impact of the surveyed nonprofits' case selection processes.*

# Analysis

## Executive Office for Immigration Review (EOIR) San Francisco Data Set

Despite the harsh effects of an individual's deportation on herself, her family, and her community, the immigration system does not generally provide appointed counsel to people facing deportation in Northern California or anywhere in the country.<sup>53</sup> We examined the EOIR data for approximately the past calendar year to determine how many individuals in San Francisco Immigration Court are able to obtain representation—either by paying for it or finding a nonprofit or pro bono provider—and how much more likely those with counsel are to win their cases. As we explain further below, our analysis of the EOIR data revealed that **detainees with lawyers are three times more likely to win their case than those without**. For the calendar year we analyzed, detainees without representation only had an 11% chance of winning their case; detainees who were represented by counsel had a 33% chance of winning their case.

Our EOIR data set comprised 8,992 cases and included all removal cases in which an Immigration Judge (IJ) made a final case related decision at the San Francisco Immigration Court during the time period between March 1, 2013 and February 28, 2014.<sup>54</sup>

The cases in this time period can be broken into three categories:<sup>55</sup>

### Individuals who were...



## Detained immigrants are less likely to have representation.

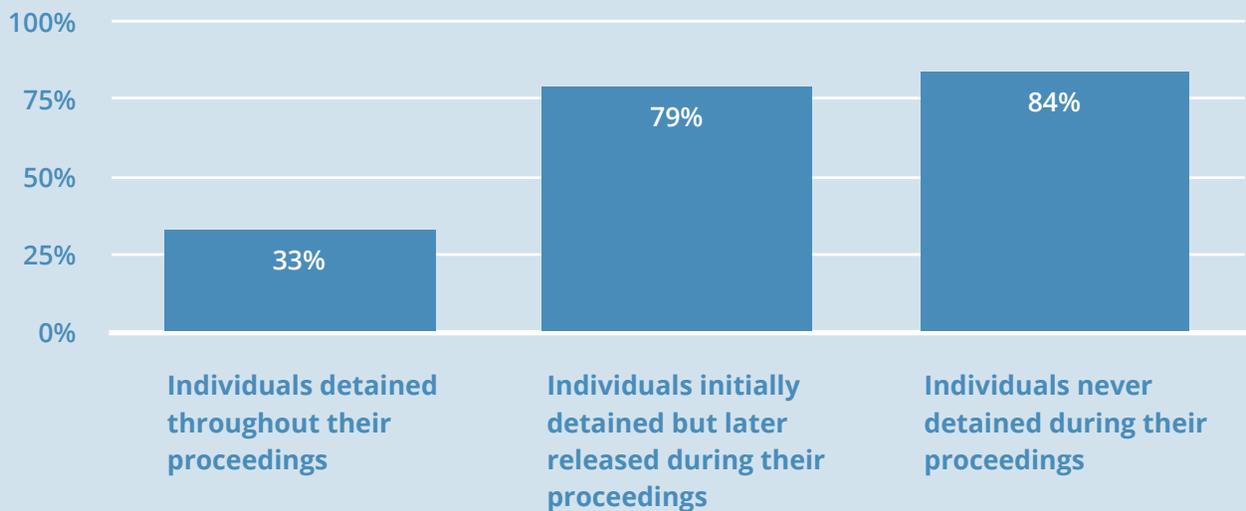
Despite the fact that detained individuals with attorneys are far more likely to avoid deportation, detainees are far less likely to have lawyers. For our data set, the proportion of detained individuals with representation (33%) is less than half of the proportion of those not detained with representation (84%).

### FIGURE 1

#### Cases in Which Immigrant was Represented by an Attorney

**Figure 1** shows the percent of cases in which the immigrant had attorney representation. The comparison is done for each category of individuals in proceedings: those detained throughout their proceedings; those detained but later released; and those never detained.

**Percentage of cases with representation:**



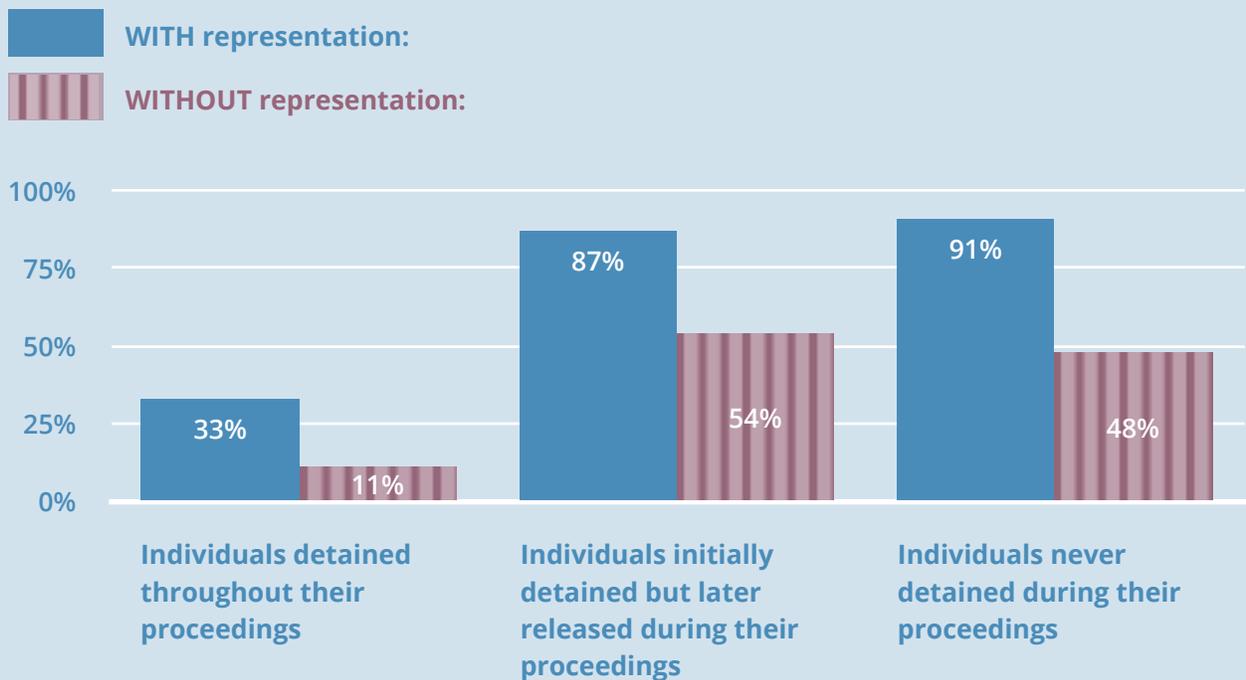
## Detained individuals with lawyers were three times more likely to prevail in their removal cases than those without attorneys.

Represented detainees avoided deportation 33% of the time, whereas unrepresented detainees avoided deportation only 11% of the time.<sup>56</sup> For all of the three groups, legal representation meant that individuals were far more likely to ultimately prevail in their cases. In detained cases, individuals with lawyers had three times as high a chance of prevailing as those without counsel.

### FIGURE 2

#### Cases in Which Immigrant Succeeded in Fighting Deportation

Figure 2 compares outcomes for cases in which individuals were represented by counsel against those not represented by counsel. The comparison is done for each category of individuals in proceedings: those detained throughout their proceedings; those detained but later released; and those never detained.



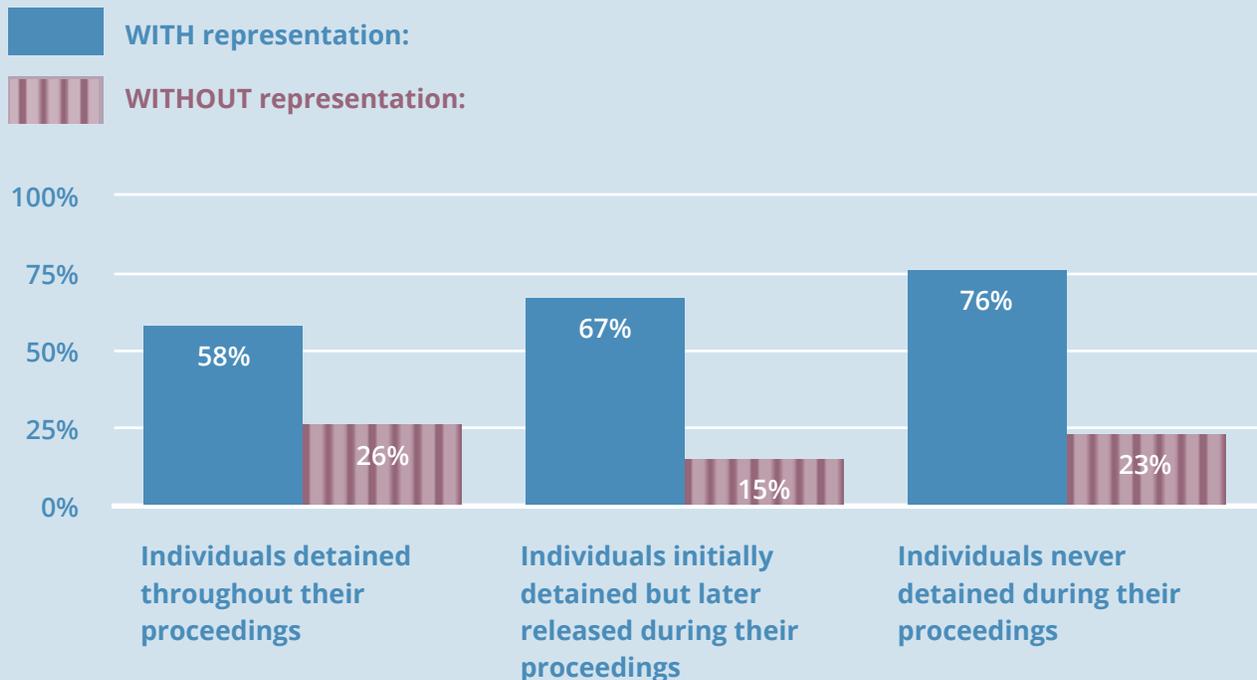
## Immigrants who have lawyers are more likely to file applications requesting the Immigration Judge to allow them to stay in the United States.

In deportation proceedings, immigrants can fight to stay in the United States by filing an application for relief, to argue that the judge should let them stay in the country because of family and community ties, or because they fear persecution abroad. Our study revealed that detained immigrants with lawyers were dramatically more likely to file relief applications than those who did not have attorneys. Detained immigrants were more than twice as likely to request relief if represented; non-detained immigrants were more than three times as likely to request relief if represented; and initially detained immigrants were more than four times as likely to request relief if represented.<sup>57</sup>

### FIGURE 3

#### Percentage of Individuals Applying for at Least One Form of Immigration Relief

**Figure 3** compares the prevalence of applications for relief from removal in cases where individuals are represented by lawyers against those not represented by lawyers.



## **Representation is particularly critical at the early stage of removal proceedings, when the immigration judge decides whether to release a detained immigrant on bond.**

Under immigration law, after DHS makes an initial bond determination, immigrants can request a bond hearing, where an immigration judge considers whether the person should be released.<sup>58</sup> If an individual is released on bond, she can fight removal from outside of detention, where she is more likely to obtain counsel and more likely to prevail in her proceedings, given the increased access to employment, family support, community involvement, and paid counsel that release likely represents.

Attorneys are critical to helping detainees obtain release on bond. Because bond hearings typically occur on a short timeline, detainees have very little time to collect and submit key documents, such as letters from family or employers, tax records, and proof of family relationships.<sup>59</sup> It is virtually impossible for unrepresented detainees—who are incarcerated in prison-like conditions with limited access to mail and telephones and virtually no access to the Internet—to obtain these critical records.

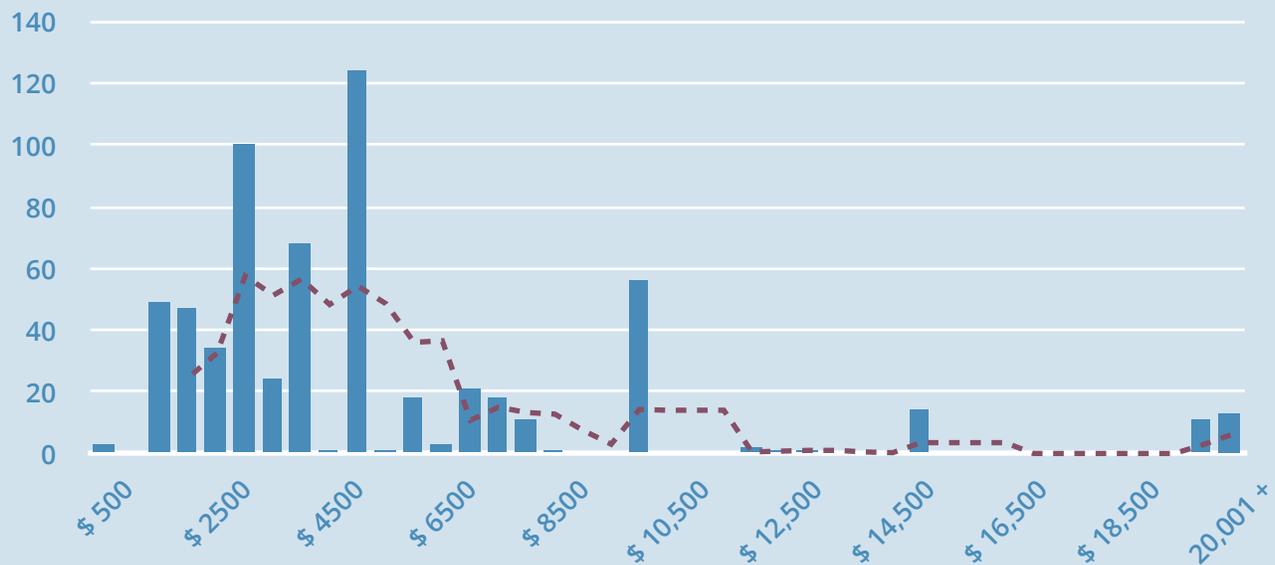
Attorneys can also advocate for lower bond amounts. Our examination of the EOIR data set revealed that the average bond amount set by San Francisco Immigration Court judges during the study period was \$5,742. If immigration judges set high bond amounts, detained individuals who cannot pay the bond amount will not be released and will instead remain detained. Even those with some funds to pay high bond amounts face an impossible choice: should they use their limited funds to pay bond, or should they pay for an attorney to represent them in their removal proceedings? As the recent Katzmann Study Group reports in New York have clarified: “lack of representation and high bond amounts create a vicious cycle, with access to counsel serving as an important factor in obtaining bond and detention creating a major obstacle to obtaining counsel.”<sup>60</sup>

## FIGURE 4

### Bond Amounts for Immigrants Released on Bond While Fighting Deportation Cases

**Figure 4** shows the prevalence of bond amounts that immigration judges set for immigrants who were detained while fighting their deportation cases.

Number of cases where bond was ordered:



### A Note on EOIR Data Analysis

*Because our study is of actual EOIR data, and not a randomized experiment relating to representation, we can conclude only that representation is associated with better case outcomes, not that representation necessarily causes the outcomes. Other factors—including that immigrants with stronger claims may be more likely to find representation—could be responsible as well for the better case outcomes.*

*In addition, the analysis likely overstates the number of individuals who were represented because the EOIR data set indicates that an immigrant was represented if she was represented at any stage in her removal proceedings. This means that someone who was represented for only one hearing over a two year period would still be counted as represented for the purposes of our analysis.*

# Analysis

## Northern California Removal Defense Provider Survey

Northern California, and in particular, the Bay Area, is fortunate to have a rich and competent group of nonprofits currently engaged in detained removal defense work on behalf of indigent immigrants. Their rates of success in winning bond for their detained clients is 71%, well above the bond rates generally found in our EOIR data analysis, even for those who have attorneys. Similarly, their rate of prevailing in their clients' removal hearings is 83%, far exceeding the general San Francisco EOIR averages. Unfortunately, however, the nonprofits currently engaged in detained removal defense work can only meet a small fraction of the need for counsel.

### Nonprofit Organizations Surveyed

We surveyed all of the nonprofit organizations in Northern California that represented at least five or more adult detained immigrants in removal proceedings before the San Francisco Immigration Court for no fee or for low fee between April 1, 2013 and April 1, 2014.<sup>61</sup> All of the organizations that were surveyed responded to the survey.<sup>62</sup> The organizations include: Asian Americans Advancing Justice, Asian Law Caucus (San Francisco, CA); Central American Resource Center (San Francisco, CA); Centro Legal de la Raza (Oakland, CA); Community Legal Services in East Palo Alto (East Palo Alto, CA); Dolores Street Community Services (San Francisco, CA); East Bay Community Law Center (Berkeley, CA); Lawyers' Committee for Civil Rights of the San Francisco Bay Area (San Francisco, CA); Pangea Legal Services (San Francisco, CA); Social Justice Collaborative (Oakland, CA); and University of California, Davis, School of Law, Immigration Law Clinic (Davis, CA).

The nonprofits we surveyed provide a wide range of detained removal defense work, including, but not limited to: legal challenges to removability; representing immigrants in persecution and torture based claims, such as asylum, withholding of removal, and relief under the Convention Against Torture;<sup>63</sup> discretionary waiver applications for certain long term permanent residents;<sup>64</sup> discretionary waiver applications for certain long term nonpermanent residents;<sup>65</sup> applications for relief based on being a victim of a crime (U-Visa, T-Visa, VAWA);<sup>66</sup> applications for relief based on certain juvenile dependency or family court findings (SIJS); applications for temporary residency for certain nationalities;<sup>67</sup> and requests for prosecutorial discretion, including requests for termination of proceedings, administrative closure of proceedings, and Deferred Action for Childhood Arrivals (DACA).<sup>68</sup>

The surveyed organizations had an average of 2.3 full-time staff attorneys working on detained removal cases. The average number of languages (not including English) spoken by members of the staff at a nonprofit organization is approximately three, with a total of 14 different languages spoken by staff at the nonprofits we surveyed (Spanish, Greek, Tamil, French, Farsi, Italian, Portuguese, Cantonese, Mandarin, Vietnamese, Urdu, Hmong, German, and Sierre Leone Creole). Six of the ten surveyed nonprofits employ income criteria in selecting cases, in that they will only represent clients below a designated income cut-off.

For purposes of reporting the survey results, the charts below refer to each of the nonprofit organizations by a randomly assigned number (Organization (“Org”) 1 to Organization 10). The survey questions relating to cases accepted, cases completed, and results were limited to the time frame April 1, 2013 to April 1, 2014. The total number of cases accepted by the surveyed nonprofits during that timeframe was 214.

## Types of Clients Served and Community Members Impacted by Legal Services

The survey results provide important information relating to the demographics of the detained immigrants served, including their length of residency in the United States and their family ties. Our survey results confirm what Northern California immigrant families already know: many of the detained clients of local nonprofits have deep and longstanding ties in this country.

- ▶ Over 53% of the clients represented by the surveyed nonprofits had lived in the United States for ten or more years.
- ▶ 77% of the surveyed nonprofits’ detained clients lived with other family members prior to their detention by ICE.<sup>69</sup>
- ▶ 48% of the nonprofits’ detained clients were separated from children who were living in their home.<sup>70</sup>
- ▶ Over 57% of the relatives living at home and separated from the detained immigrants were United States citizens.<sup>71</sup>
- ▶ 65% of detained immigrants represented by the surveyed nonprofits were employed in the United States prior to being detained.<sup>72</sup>
- ▶ 78% of the detained immigrants represented by the nonprofit organizations resided in Northern California prior to their detention.<sup>73</sup>

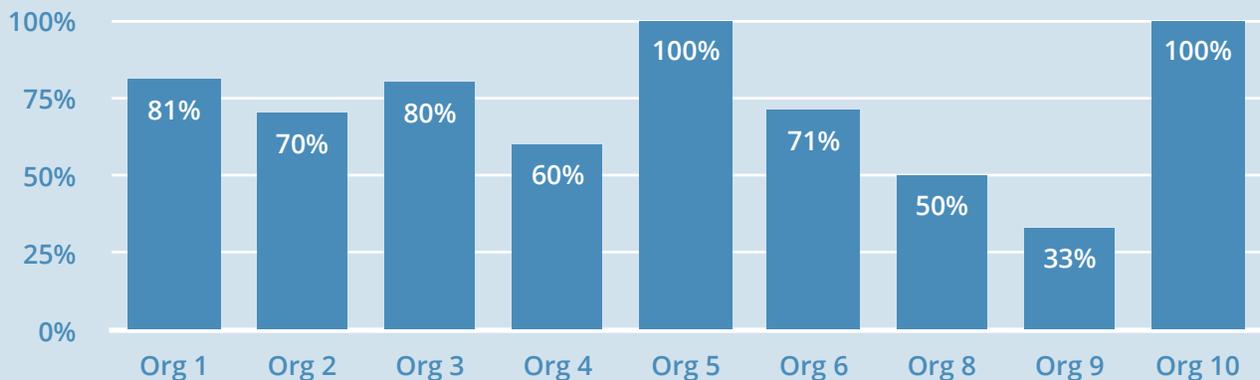
## Nonprofit Organizations' Success Rates Far Surpass General EOIR Data Reported Success Rates

Perhaps one of the most notable pieces of information obtained through the survey results and analysis was the remarkably high level of success that the surveyed nonprofit organizations achieved on behalf of their clients.<sup>74</sup> For example, the average success rate of obtaining bond and securing release on behalf of a detained immigrant where bond was requested was 71.4%.<sup>75</sup> The (weighted) average amount of bond issued by the Immigration Judges (where bond was requested and obtained) was \$3,411. This is significantly lower than the \$5,742 average bond amount in San Francisco based on the EOIR dataset analysis. See Figure 4, *supra*. This difference—amounting to \$2,331—is particularly substantial for indigent detainees, who may not have the resources to pay for high bonds, and are not able to work while detained.

### FIGURE 5

#### Bond Results—Nonprofits Surveyed

Figure 5 shows the percent of cases in which a bond hearing was requested and the individual was released on bond.

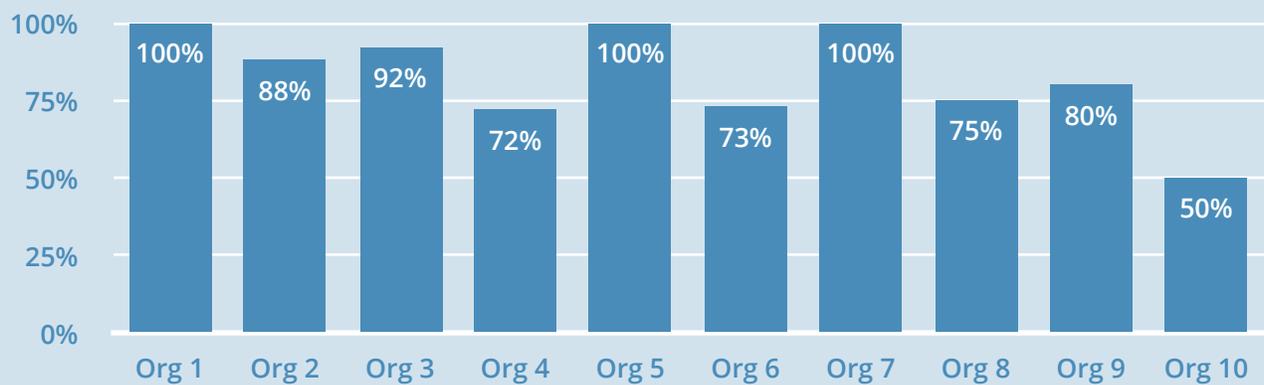


In addition to achieving success at obtaining release from detention for their clients, the nonprofit organizations surveyed also achieved impressive success in securing successful resolutions of their cases. Of the cases completed by nonprofits during the surveyed time period,<sup>76</sup> 83% were successfully resolved such that the detained immigrant was permitted to remain in the United States indefinitely.

## FIGURE 6

### Cases in Which Immigrants Won and Were Permitted to Stay in the United States

**Figure 6** shows the percentage of cases completed in which the case was successfully resolved such that the immigrant was permitted to remain in the United States.



The average rate of success for the nonprofits surveyed (83%) is well above the average rate of success indicated by our analysis of the EOIR data set for those without counsel (11%).<sup>77</sup> In a comparison of the two data sets, the rates of success for the surveyed nonprofits are also significantly higher than even those who did have counsel (33%). See Figure 2, *supra*.

### Nonprofit Organizations are Working at or Above Capacity

Unfortunately, despite the levels of success, the nonprofits currently engaged in this work are only able to assist a fraction of those who are in need. As described above, the average number of attorneys working on the detained removal defense docket is only 2.3 per organization. The total number of attorneys working with the surveyed nonprofits engaged in detained removal defense work for adults is 23.

The nonprofits surveyed overwhelmingly indicated that the reason for not accepting more cases was related to a lack of staff and funding. The organizations surveyed accepted a total of 214

cases for representation during the period between April 1, 2013 and April 1, 2014. All of the organizations indicated that, with this caseload, they lacked further resources to represent additional individuals facing removal. Out of the ten organizations surveyed, six collected data on number of cases not accepted for representation during the surveyed time period. The number of cases these six organizations were unable to accept exceeded 1000.<sup>78</sup>

The survey results demonstrate two critical points. The first is that representation by Northern California nonprofits is associated with a high rate of successful outcomes for detained individuals in removal proceedings. Because a majority of immigrants represented by surveyed nonprofits have family and community ties in the United States, the result of the nonprofits' success is that their clients can remain in Northern California with their families. The second is that removal defense nonprofits in Northern California do not have the capacity to meet the current and significant need of detained immigrants for competent counsel.

### ***The Effects of Case Selection by Surveyed Nonprofits***

*Each of the surveyed nonprofits has a different way of selecting cases for representation—this is, of choosing which cases to take from all of the immigrants seeking their representation. These selection criteria likely have an effect on each nonprofits' success rates: a nonprofit that selects cases based on likelihood of success will be more likely to secure better outcomes for its clients. Our analysis of the survey data does not take into account the potential impact of the surveyed nonprofits' case selection processes.*

## Conclusion and Next Steps

Northern California's families know all too well the realities of detention and deportation in our communities. Deportation means banishment from families, homes, and communities. Members of Northern California's immigrant communities have appeared in immigration court alone to fight their deportation, despite the complexity of the immigration laws and the fact that they face a government attorney typically well versed in the law. The challenges of deportation in Northern California have grown as the annual rate of deportations skyrockets. In Northern California, thousands of individuals are detained in facilities far from family, without an attorney to advocate on their behalf.

This report examines, for the first time, the concrete effect of representation for Northern California's detained immigrants. We have learned that detained immigrants with lawyers are over three times more likely to prevail in their cases. Many of these individuals have viable claims that require substantial legal and factual preparation. And the local nonprofit removal defense providers—though working at full capacity—are not able to handle the crushing need for representation. These nonprofits informed us that they are forced to turn away cases because they lack the staffing and resources to provide representation to immigrants in need.

The next step for addressing Northern California's immigrant representation crisis is the development of a realistic framework for indigent removal defense representation. New York City has recently provided a model for such representation through the funding and creation of a universal representation program for every indigent immigrant detainee facing removal proceedings in New York's immigration courts.<sup>79</sup> Northern California should follow this lead, and establish a universal representation framework for detained immigrants.

Until such a model is fully funded and operational, the Northern California Collaborative for Immigrant Justice proposes to launch a pilot program in the short term, given the urgent need for representation of Northern California's detained immigrant population.

The Collaborative's goals for the pilot program are to further examine the challenges faced by detained immigrants and the difference that representation makes. Through the pilot process, the Collaborative hopes to refine its proposal for a removal defense project for detained individuals as well as an accompanying funding strategy. Because of the scale of the representation crisis we face in Northern California, the solution will require partnerships between nonprofit, pro bono, and private bar legal providers; ICE and EOIR; state, city, and county governments; and the philanthropic community. Through the sustained involvement of all of these key actors, the Collaborative hopes to extend to Northern California's detained immigrants the basic protection of competent representation in removal proceedings.

# Appendix and Endnotes

# Appendix A

## Assumptions of EOIR Data Analysis

1. The study used the last year of available data (March 1, 2013 to February 28, 2014). Some proceedings are excluded because they lacked a final outcome during this time period. This means that the study slightly underestimates the total number of proceedings. The study may also overestimate slightly how many of the cases were detained throughout; some may have been released after the data cut-off date.
2. In order to measure whether a case was represented, the study asked, for each case, whether the alien was represented during any “proceeding.” A proceeding in this context does not mean a proceeding in the formal sense, but rather a row in the “proceeding” table. Often cases have more than one proceeding row associated with them even if there was only one formal proceeding—for example, a new proceeding is generated when there is a change of venue. In order to be sure that we are not underestimating the rate of representation, we coded a case as represented for the merits hearing if any proceeding had a representative associated with it at any time. For example, if a case had five proceeding rows (which is unusual), and just one of those rows referred to a lawyer, the study included the case as represented.
3. Unlike the New York Immigrant Representation Study, our study was unable to distinguish between dependent and non-dependent cases. We believe that an adjustment for such cases is unlikely to be significant.
4. We measured detention status as of an individual’s last hearing date. There is therefore no way to distinguish between immigrants who spent long and short periods in detention.
5. The study coded cases as not leading to deportation if the EOIR outcome was any of: “Alien Maintains Legal Status,” “Case Terminated by IJ,” “Conditional Grant,” “Granted,” “Relief or Rescinded,” “Legally Admitted,” “Prosecutorial Discretion – Terminated,” “Failure to Prosecute (DHS Cases Only),” “Haitian,” “Temporary Protected Status,” and “Prosecutorial Discretion - Admin Close.”
6. The study coded cases as “Removal/VD” if the EOIR outcome was any of “Remove,” “Voluntary Departure,” “Excluded,” or “Deported.” The first two of these were overwhelmingly the most common; the last two codes are holdovers from an old statutory regime.
7. A small number of cases during the study period had outcomes with unintelligible outcome codes. There were 20 never detained cases with such codes; 11 initially detained cases; and 10

detained cases throughout proceedings. Given the overall number of cases, this level of measurement error is acceptable; regardless of the actual outcomes of these cases, the general results we note would hold.

## Appendix B

### Breakdown of Relief Applications by Type

<b>Table 1</b>	<b>LPR Related</b>	<b>Non-LPR Related</b>	<b>Other</b>	<b>Persecution</b>	<b>Voluntary Departure</b>
<b>Represented</b>	<b>15%</b>	<b>10%</b>	<b>2%</b>	<b>35%</b>	<b>18%</b>
<b>Unrepresented</b>	<b>4%</b>	<b>1%</b>	<b>0%</b>	<b>9%</b>	<b>17%</b>

Table 1 shows the percentage of detained cases in which relief applications were filed.<sup>80</sup>

<b>Table 2</b>	<b>LPR Related</b>	<b>Non-LPR Related</b>	<b>Other</b>	<b>Persecution</b>	<b>Voluntary Departure</b>
<b>Represented</b>	<b>4%</b>	<b>26%</b>	<b>3%</b>	<b>39%</b>	<b>20%</b>
<b>Unrepresented</b>	<b>1%</b>	<b>3%</b>	<b>0%</b>	<b>9%</b>	<b>5%</b>

Table 2 shows the percentage of initially detained cases in which relief applications were filed.

<b>Table 3</b>	<b>LPR Related</b>	<b>Non-LPR Related</b>	<b>Other</b>	<b>Persecution</b>	<b>Voluntary Departure</b>
<b>Represented</b>	<b>2%</b>	<b>37%</b>	<b>8%</b>	<b>57%</b>	<b>16%</b>
<b>Unrepresented</b>	<b>1%</b>	<b>6%</b>	<b>1%</b>	<b>17%</b>	<b>13%</b>

Table 3 shows the percentage of never detained cases in which relief applications were filed.

## Appendix C

### Assumptions of Nonprofit Survey Data Analysis

1. Of the ten organizations surveyed, six organizations indicated that they maintained separate data for their detained and non-detained removal defense docket. Of the four organizations that reported that they did not keep separate data, each was nevertheless able to review the detained docket files in order to report the requested information accurately.
2. The survey questions relating to the number of cases accepted and the results of those cases, including bond results and substantive outcome results, were limited to the following time frame: April 1, 2013 to April 1, 2014. This means that there were a significant number of cases accepted during the time frame for which there were no final results in San Francisco Immigration Court as the cases remained pending as of April 1, 2014.
3. Our analysis was necessarily affected by the accuracy of each surveyed organization's self-reporting as to their case outcomes.
4. Our survey analysis does not examine representation or outcomes when the immigrant or DHS appealed an immigration judge's decision to the Board of Immigration Appeals (BIA), or when the immigrant subsequently petitioned for review of the BIA decision to the Ninth Circuit Court of Appeals.
5. The total number of cases accepted by the surveyed nonprofits during April 1, 2013-April 1, 2014 was 214.
6. The survey instrument referred to throughout this report was developed by Stanford Law School Immigrants' Rights Clinic and was based, in large part, on a similar survey used in the New York representation study. After developing the survey, we first created a list of nonprofit organizations currently engaged in representing detained adult immigrants in removal proceedings before the San Francisco Immigration Court. The list was a result of queries regarding which organizations were engaged in this work. After identifying the ten organizations in Northern California currently engaged in this work, we emailed each of them the 18 page survey instrument. The survey instrument asked general questions about number of attorneys working on the detained immigrant docket, the experience of the attorneys, and the types of services provided. The survey instrument also asked more specific questions related to the types of detained services provided to adults from April 1, 2013 to April 1, 2014 and the results of the services provided to detained immigrants. The survey instrument asked questions relating to current funding sources and barriers encountered in the representation

of detained immigrants. Subsequent to receiving the responses, we then engaged in follow-up to ensure accuracy before compiling the information and reporting it. The survey instrument is on file with the authors.

# Endnotes

- 1** In fiscal year 2014, the Northern California detention facilities had an average population of 599 immigrant detainees per day. ERO Custody Management Division Response to FOIA 14-03470, available at <http://www.ice.gov/foia/library/>.
- 2** The immigration statute provides: “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.” 8 U.S.C. § 1362 (1996). The Executive Office of Immigration Review (EOIR) has recently launched efforts to assist some children in removal proceedings through the justiceAmeriCorps program. See <http://www.nationalservice.gov/newsroom/press-releases/2014/justice-department-and-cnccs-announce-new-partnership-enhance>. And following an order from a district court in *Franco-Gonzalez v. Holder*, No. CV 10-02211 (C.D. Cal.) (Apr. 23, 2013), the federal government has provided procedures for the identification of mentally-ill detainees found incompetent, and appointed representation in certain circumstances. See [https://www.ice.gov/.../11063.1\\_current\\_id\\_and\\_infosharing\\_detainees\\_mental\\_disorders.pdf](https://www.ice.gov/.../11063.1_current_id_and_infosharing_detainees_mental_disorders.pdf).
- 3** Office of Planning, Analysis & Tech., U.S. Dep’t of Justice, FY 2013 Statistical Year Book, at A2 (2013), available at <http://www.justice.gov/eoir/statspub/fy13syb.pdf> [hereinafter “DOJ FY 2013 Year Book”].
- 4** Transactions Record Access Clearinghouse, Immigration Court Backlog Tool, available at [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/).
- 5** In 1893, the Supreme Court held that criminal constitutional protections do not apply to deportation proceedings because they are purely civil in nature. See *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).
- 6** Amnesty International, *Jailed Without Justice: Immigration Detention in the United States* (Mar. 2007) available at <http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf> [hereinafter “Jailed Without Justice”] at 32-36.
- 7** Letter from Hon. Dana Leigh Marks, President of the National Association of Immigration Judges (Dated Mar. 22, 2013) (copy on file with authors) [hereinafter “Hon. Dana Leigh Marks letter”].

<sup>8</sup> Santa Clara County Office of Human Relations, A Public Forum on Immigration: Immigrant Voice (Dec. 2010), available at <http://www.sccgov.org/sites/ohr/Publications%20and%20Reports/Documents/Immigrant-Voices.pdf> [hereinafter "Santa Clara County Report"], at 4. According to the 2006 Census, Santa Clara County has the highest percentage of foreign-born residents in California. *Id.* at 17. As of 2010, San Mateo County "ranked fourth among counties in California and eight across the nation in the concentration of foreign-born residents." Silicon Valley Community Foundation, San Mateo County Immigrant Focus (2013), available at [http://www.siliconvalleycf.org/sites/default/files/publications/svcf\\_san\\_mateo\\_county\\_immigrant\\_focus.pdf](http://www.siliconvalleycf.org/sites/default/files/publications/svcf_san_mateo_county_immigrant_focus.pdf) [hereinafter "San Mateo County Report"], at 2. According to one report analyzing 2010 census data, "between 2000 and 2010 San Mateo County's immigrant population increased more than any other county in California, from 25.5 to 33.3 percent." *Id.*

<sup>9</sup> See Sara Satinsky et al., Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families (Human Impact Partners, June 2013), available at <http://www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealth.pdf> at 8. Social science research consistently finds that parental psychological and economic stress—such as that caused by deportation—affects child outcomes. Rand D. Conger, Xiaojia Ge, Glen H. Elder Jr., Frederick O. Lorenz, & Ronald L. Simons, *Economic Stress, Coercive Family Process, and Developmental Problems of Adolescents* (1994); Carolyn Webster-Stratton, *Stress: A Potential Disruptor of Parent Perceptions and Family Interactions* (1990).

<sup>10</sup> See Satinsky et al., Family Unity, *supra* note 9.

<sup>11</sup> See Kirk Semple, New York City Council Expected to Approve 2 Plans Aiding Immigrants, *New York Times* (Jun. 24, 2014).

<sup>12</sup> See New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* (2011), available at <https://www.ils.ny.gov/files/Accessing%20Justice.pdf> [hereinafter "New York Study, Part 1"]; New York Immigrant Representation Study, *Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings* (2013), available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_ReportII.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf) [hereinafter "New York Study, Part 2"].

<sup>13</sup> As is described more fully in note 77, *infra*, the nonprofit survey does not completely overlap with the EOIR data set. However, both analyses were conducted as to immigration cases in the San Francisco immigration court over a year-long period.

<sup>14</sup> This estimate is based on data obtained from EOIR through the Freedom of Information Act that includes all removal cases in which an Immigration Judge made a decision at the San Francisco Immigration Court during the time period between March 1, 2013 and February 28, 2014.

- 15** 4,152 individuals were detained for some or all of their removal proceedings in San Francisco Immigration Court during the study period. Of that number, 1,943 individuals were detained for the entirety of their proceedings, and 2,209 individuals were initially detained but later released. San Francisco Immigration Court conducts removal proceedings in two locations: 630 Sansome Street and 100 Montgomery Street.
- 16** See generally 8 U.S.C. § 1226 (conferring authority to detain noncitizens while immigration proceedings are pending).
- 17** See, e.g., *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2009) (class action lawsuit covering all individuals detained for more than six months); *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008) (approximately six years of detention pending proceedings).
- 18** DHS enters into contracts with counties—termed Inter-Governmental Service Agreements (IGSAs)—to house detainees. The IGSAs for Yuba County and Sacramento County are available at <http://www.ice.gov/foia/library/>. The IGSA for the West County Detention Facility does not appear to be publicly available.
- 19** ERO Custody Management Division Response to FOIA 14-03470, available at <http://www.ice.gov/foia/library/>.
- 20** See *Jailed Without Justice*, *supra* note 6, at 29.
- 21** See *Jailed Without Justice*, *supra* note 6, at 29-43. See also generally Department of Homeland Security Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities* (Dec. 2006), available at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_07-01\\_Dec06.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_07-01_Dec06.pdf).
- 22** See *Complaint for Injunctive and Declaratory Relief, Lyon et al. v. U.S. Immigration and Customs Enforcement*, No. C-13-05878 EMC (N.D. Cal.) (filed Dec. 19, 2013).
- 23** *Baltazar Alcazar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004) (citing *Castro-O'Ryan v. U.S. Dep't of Immigration & Naturalization*, 847 F.2d 1307, 1312 (9th Cir. 1987)).
- 24** See 8 C.F.R. § 1239.1.
- 25** See, e.g., *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013) (employing categorical rule to determine whether prior conviction renders noncitizen removable); *Ceron v. Holder*, 747 F.3d 773 (9th Cir. 2014) (same).
- 26** See 8 C.F.R. § 1236.1(d) (bond redetermination hearings before immigration judges). See also *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006) (listing factors immigration judges should consider in deciding release on bond).

- 27** See generally Katherine A. Brady, *Defending Immigrants in the Ninth Circuit* 11-7 to 11-210 (10th ed. 2008) (listing forms of relief, eligibility issues, and discretionary standard).
- 28** See generally *id.*
- 29** See, e.g., 8 U.S.C. § 1101(a)(15)(U) & (T) (visas available to victims of crime and victims of human trafficking); [www.uscis.gov/humaintarian/consideration-deferred-action-childhood-arrivals-daca](http://www.uscis.gov/humaintarian/consideration-deferred-action-childhood-arrivals-daca) (describing procedures and requirements for obtaining prosecutorial discretion for childhood arrivals).
- 30** See 8 C.F.R. § 1003.38 (governing appeals to the Board of Immigration Appeals); 8 U.S.C. § 1252 (governing judicial review of removal orders).
- 31** See United States Courts for the Ninth Circuit, 2012 Annual Report 61 (median time between filing of appeal to final order in 2012 was 15.3 months); Immigration Court Backlog Tool, Transaction Records Access Clearinghouse, available at [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/) (mean time for case resolution for cases currently pending in immigration court as of July 2014 was 604 days).
- 32** See 8 U.S.C. § 1229a(b)(4)(A) (providing that alien has right to representation “at no expense to the Government”).
- 33** Immigration Court Backlog Tool, Transaction Records Access Clearinghouse, available at [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/). See also generally Lenni B. Benson & Russell R. Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* (Jun. 2012), available at [www.acus.gov/.../Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf](http://www.acus.gov/.../Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf) [hereinafter “Benson & Wheeler”].
- 34** See Hon. Dana Leigh Marks Letter, *supra* note 7.
- 35** Benson & Wheeler, *supra* note 33, at 56.
- 36** See *id.* at 59.
- 37** According to recent estimates, 82% of children born to undocumented immigrants in this country are U.S. citizens. Jeffrey S. Passel & D’Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, Pew Hispanic Center (Feb. 2011), available at [www.pewhispanic.org/files/reports/133.pdf](http://www.pewhispanic.org/files/reports/133.pdf), at 2011. Between July 2010 and September 2012, 205,000 deportees nationwide reported having at least one U.S.-citizen child. Seth Freed Wessler & Julianne Hing, *Torn apart : struggling to stay together after deportation* (2012). For a demographic analysis of undocumented immigrants in California, see Laura E. Hill & Hans P. Johnson, *Unauthorized Immigrants in California* (July 2011), available at [http://www.ppic.org/content/pubs/report/R\\_711LHR.pdf](http://www.ppic.org/content/pubs/report/R_711LHR.pdf).

- 38** See Santa Clara County Report, *supra* note 8.
- 39** The San Francisco Immigrant Integration Project: Findings from Community-Based Research Conducted by the San Francisco Immigrant Legal & Education Network (SFILEN) (2014), available at [https://www.usfca.edu/uploadedFiles/Destinations/Institutes\\_and\\_Centers/McCarthy/SFILEN%20SFIP%20Final%20Report%202014.pdf](https://www.usfca.edu/uploadedFiles/Destinations/Institutes_and_Centers/McCarthy/SFILEN%20SFIP%20Final%20Report%202014.pdf) [hereinafter “SFILEN Report”], at 2.
- 40** United Nations Alliance of Civilizations, Immigrant Relations and Integration Services, Santa Clara County and San Jose, California (Apr. 2011), available at <http://www.unaoc.org/ibis/2011/04/11/immigrant-relations-and-integration-services-santa-clara-county-and-san-jose-california/>.
- 41** County of Santa Clara, Immigrant Relations and Integration Services (Mar. 2012), available at [http://www.sccgov.org/sites/ohr/Immigrant%20Relations%20and%20Integration%20Services/Pages/Immigrant-Relations-and-Integration-Services-\(IRIS\).aspx](http://www.sccgov.org/sites/ohr/Immigrant%20Relations%20and%20Integration%20Services/Pages/Immigrant-Relations-and-Integration-Services-(IRIS).aspx).
- 42** San Mateo County Report, *supra* note 8, at 2.
- 43** Joanna Dreby, How Today’s Immigration Enforcement Policies Impact Children, Families and Communities: A View from the Ground (Center for American Progress, 2012), available at <http://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf>, at 9-14.
- 44** 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”], at 27-30.
- 45** *Id.* at 32.
- 46** American Immigration Policy Center, Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System (December 2012), available at [http://www.immigrationpolicy.org/sites/default/files/docs/falling\\_through\\_the\\_cracks\\_3.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/falling_through_the_cracks_3.pdf), at 5.
- 47** See generally Satinsky et al., Family Unity, *supra* note 9 (collecting sources relating to psycho-social effect of deportation on families).
- 48** Chaudry et al., Facing Our Future, *supra* note 44, at 46-48; see also Satinsky et al., Family Unity, *supra* note 9, at 12.
- 49** *Id.* at 42.

**50** Satinsky et al., *Family Unity*, supra note 9, at 11; see also Chaudry et al., *Facing Our Future*, supra note 44, at 48-49. Social science and psychological research has found that children with incarcerated parents suffer increased risk of delinquency, anxiety, depression, substance abuse problems, and unemployment. See Drika Weller Makariev & Phillip R. Shaver, *Attachment, Parental Incarceration and Possibilities for Intervention: An Overview* (2010); Joseph Murray & Lynne Murray, *Parental Incarceration, Attachment and child Psychopathology* (2010). It is likely that such challenges also affect the children who suffer separation and isolation after a parent's deportation. One study explains that the physical separation of a parent and child disrupts the child's safe base of existence and learning, risking depression, anxiety, withdrawal, aggression, and social/cognitive difficulties. See Drika Weller Makariev & Phillip R. Shaver, *Attachment, Parental Incarceration and Possibilities for Intervention: An Overview* (2010).

**51** *Jailed Without Justice*, supra note 6, at 6.

**52** See Physicians for Human Rights & the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (Jun. 2003), available at <http://www.survivorsoftorture.org/files/pdf/perstoprison2003.pdf>; Southwest Institute for Research on Women, *UNSEEN PRISONERS: A Report on Women in Immigration Detention Facilities in Arizona* (Jan. 2009), available at <http://sirow.arizona.edu/sites/sirow.arizona.edu/files/UnseenPrisoners.pdf>.

**53** See 8 U.S.C. § 1229a(b)(4)(A) (providing that alien has right to representation "at no expense to the Government").

**54** Reinstatement of removal cases, in which DHS alleges that an immigrant is subject to a prior order of removal, are only in the data set if the immigrant contends that he or she has a reasonable fear of persecution if returned to his or her home country. See 8 U.S.C. § 1231(a)(5) (governing reinstatement generally); 8 C.F.R. § 1208.31 (governing reasonable fear determinations). When the immigrant is able to convince a DHS official that her fear is reasonable, or where the immigrant challenges the official's decision that it is not, an immigration judge has jurisdiction over the immigrant's case. 8 C.F.R. § 1208.31. Such cases appear in EOIR's database as "Reasonable Fear" or "Withholding Only" cases. Of the 8,992 cases in our year of data, 67 are "Reasonable Fear" cases and 118 are "Withholding Only" cases. It is important to note that the immigrant is not entitled to representation—unless he can pay for one or find someone to provide representation for free—during the reasonable fear interview with the DHS official, and that many unrepresented individuals may not appeal that official's adverse decision as regards whether the individual satisfies the reasonable fear standard.

**55** Our analysis does not examine representation or outcomes when the immigrant or DHS appealed an immigration judge's decision to the Board of Immigration Appeals (BIA), or when the immigrant subsequently petitioned for review of the BIA decision to the Ninth Circuit Court of Appeals. Such appeals are comparatively rare: there were only 981 appeals of the 8,992 case completions in our year of data. Petitions for review are rarer still since they are only possible after appeal to, and disposition of case by, the BIA.

- 56** This 22 percentage point difference in outcomes for detained cases is larger than that of the New York Immigrant Representation Study of removal cases in the New York immigration courts, which found a 15 percentage point increase (from 3 to 18 percent) in successful outcomes. See New York Study, Part 1, *supra* note 12, at 19 Fig. 7.
- 57** We have provided a more detailed breakdown of these disparities by relief type in Appendix B.
- 58** See 8 C.F.R. § 1236.1(d).
- 59** See *In re Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (outlining factors relevant to release on bond).
- 60** See New York Study, Part 1, *supra* note 12, at 16.
- 61** All of the organizations surveyed were asked about the number of cases accepted between April 1, 2013-April 1, 2014. The organizations were also asked about whether any of those cases were subsequently referred to pro bono private counsel. Of the ten organizations surveyed, four organizations co-counseled at least one case with a private firm, and two organizations placed at least one case with a private firm. With the exception of one of the nonprofits whose work is focused primarily on providing referral and mentoring services on persecution based claims, the overwhelming majority of cases accepted by the surveyed nonprofits were worked on exclusively by each respective nonprofits' own staff members.
- 62** Please refer to Appendix C for a summary of our survey methodology.
- 63** See 8 U.S.C. § 1158(a); 8 U.S.C. §1231(b).
- 64** See 8 U.S.C § 1229b(a); 8 U.S.C § 1182(h); 8 U.S.C. § 1227(a)(1)(H)).
- 65** See 8 U.S.C. § 1229b(b).
- 66** A U visa is a nonimmigrant visa available to certain victims of crimes who have cooperated with law enforcement. See 8 U.S.C. § 1101(a)(15)(U). A T visa is a nonimmigrant visa available to certain victims of human trafficking. See 8 U.S.C. §1101(a)(15)(T). VAWA refers to the Violence Against Women Act and provides, among other things, immigrant visas to certain spouses, children, or parents who have been the victims of domestic violence. 8 U.S.C. § 1154(a)(1)(A). SIJS refers to Special Immigrant Juvenile Justice Status and provides immigrant visas to certain unaccompanied minors who were abandoned, abused, or neglected by one or both parents. See 8 U.S.C. § 1101(a)(27)(J).
- 67** See 8 U.S.C. § 1254a.
- 68** See, e.g., <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

- 69** This average reflects the data collected from seven of the ten organizations. Three of the surveyed organizations did not collect information on this data point.
- 70** This average reflects the data collected from seven of the ten organizations. Three of the surveyed organizations did not collect information on this data point.
- 71** This average reflects the data collected from seven of the ten organizations. Three of the surveyed organizations did not collect information on this data point.
- 72** This average reflects the data collected from nine of the ten organizations. It is important to note that at least two of the nonprofits surveyed and who provided data, have a significant number of detained clients who are mentally ill and/or incompetent and those individuals were not typically employed prior to their detention. However, even with those statistics included in the average, the number of detained immigrants employed prior to their detention is still over 60%.
- 73** The average reflects the data collected from nine of the ten organizations. One of the surveyed organizations did not collect information on this data point.
- 74** The authors of this report recognize that each nonprofits' case selection process may have an impact on the levels of success reported by the surveyed nonprofits.
- 75** This number only reflects the number of individuals who were physically released from custody as a result of posting of a bond issued by an Immigration Judge. It does not reflect the number of individuals who were offered a bond, but could not afford it. Such a number would likely reflect an even higher figure. Nine of the ten organizations surveyed were able to provide data on bond hearing results.
- 76** For purposes of this survey, the term "completed" refers to a case in which the Immigration Judge issued a decision, either ordering removal, or ordering relief from removal. It also refers to a case where the Immigration Judge closed or terminated a case because the United States Citizenship and Immigration Service (USCIS) granted an application for relief from removal or where the Office of Chief Counsel agreed to administrative closure of a case in the exercise of discretion.
- 77** The survey conducted with the ten Northern California nonprofits engaged in detained removal defense work did not pertain to exactly the same cases covered by the EOIR data set in Figures 1-4, although there is likely some overlap. The survey focused on the cases accepted by the nonprofits during the survey period (April 1, 2013 to April 1, 2014). The EOIR dataset covers all removal cases in which an Immigration Judge (IJ) made a final decision at the San Francisco Immigration Court during the time period between March 1, 2013 and February 28, 2014. Although the two studies do not cover the exact same cases in San Francisco Immigration Court, both data sets cover approximately one year of (largely overlapping) time. We believe that comparison of the average rates of success is therefore useful.

**78** Four of the organizations reported that they do not track this data, most often because of a lack of capacity to do so.

**79** Kirk Semple, Public Defender System for Immigrants Facing Deportation Would Pay for Itself, Study Says (May 2014), available at [http://www.nytimes.com/2014/05/30/nyregion/study-favors-free-counsel-to-navigate-deportation.html?\\_r=0](http://www.nytimes.com/2014/05/30/nyregion/study-favors-free-counsel-to-navigate-deportation.html?_r=0); Kirk Semple, New Help for Poor Immigrants Who Are in Custody and Facing Deportation (Nov. 2013), available at <http://www.nytimes.com/2013/11/07/nyregion/new-help-for-poor-immigrants-who-are-in-custody-and-facing-deportation.html?module=Search&mabReward=relbias%3Aw%2C%7B%22%22%3A%22RI%3A18%22%7D>.

**80** Note that one case can have more than one relief application, so these percentages cannot simply be added together to find the proportion of immigrants with some form of relief available.