

**THE NEW YORK IMMIGRANT REPRESENTATION STUDY
PRELIMINARY FINDINGS**

The New York Immigrant Representation Study (NYIRS) is a two-year project of the Katzmann Immigrant Representation Study Group and the Vera Institute of Justice to ascertain and document the representational needs of indigent New Yorkers facing removal proceedings, the scope and nature of free legal services presently available, and the gap between the need for representation by indigent noncitizens facing removal and the legal defense services available to them. In the coming year NYIRS will seek input from a broad range of sources concerning ways to meet the identified unmet representational needs and, using that input, will propose a series of solutions and steps to meet those needs in the near to medium term.¹

The following preliminary findings were derived from Executive Office for Immigration Review (EOIR) data regarding immigration court proceedings from October 2005 through July 2010, which Vera matched with a list provided by U.S. Immigration and Customs Enforcement (ICE) of people apprehended in New York from October 2005 through December 2010.² NYIRS analyzed representation at the New York Immigration Courts (26 Federal Plaza, Varick Street, three Institutional Removal Program sites north of New York City), and for individuals apprehended in New York but transferred elsewhere.

The two most important variables in obtaining a successful outcome in a case (defined as relief or termination) are having representation and being free from detention. Either factor in a case, being detained but represented or not detained but unrepresented, drops the success rate dramatically. When neither factor is present, the rate of successful outcome drops even substantially more.

Represented and released or never detained -----	74% have a successful outcome
Represented but detained -----	18% have a successful outcome
Unrepresented but released or never detained ----	13% have a successful outcome
Unrepresented and detained -----	3% have a successful outcome

A striking percentage of detained and non-detained immigrants appearing before the New York immigration courts do not have representation. Data indicate that in New York City 60% of detained immigrants and 27% of non-detained immigrants do not have counsel by the time their cases are completed. The data demonstrate how significantly detention reduces access to representation. Moreover, these numbers surely understate actual representation rates, as many New Yorkers are removed not through immigration court proceedings but rather through administrative procedures, where they are even less likely to obtain representation.³

The lack of representation for detained individuals is aggravated by the fact that ICE transfers almost two thirds (64%) of those detained in New York to far-off detention centers (most frequently, in Texas, Louisiana, and Pennsylvania), where they face the greatest obstacles to obtaining counsel. Individuals who are transferred elsewhere and who remain detained and out of New York are unrepresented 79% of the time.

¹ We acknowledge with much appreciation the generous support of the Leon Levy Foundation in conjunction with the Governance Institute and the pro bono involvement of the participants of the Immigrant Representation Study Group.

² The statistics derived from EOIR data were compiled and analyzed by the Vera Institute of Justice. They do not constitute official EOIR statistics.

³ Immigration Enforcement Actions: 2009, Annual Report, DHS Office of Immigration Statistics (Aug. 2010).

The vast majority (92%) of representation in immigration proceedings in New York is provided by private attorneys. Seven percent of the representation is provided by non-profit organizations (with one accredited representative alone accounting for almost half of that 7%), 1% by pro bono attorneys, and less than one half of 1% by law school clinics. For people whose cases finish while they are detained, however, private attorneys account for only 64% of the cases with representation; the accredited representative referred to in the prior sentence accounts for 28% of the detained represented cases; other non-profits account for 3%, pro bono 6%, and law school clinics less than one quarter of 1%.

There is also a significant unmet need for competent representation. The Study Group on Immigrant Representation observes that these preliminary findings, which show quite clearly that those with legal representation fare far better than those without, do not address a critical problem that needs to be examined in a future analysis – the lack of adequate counsel and its impact on the administration of justice.

All immigrants facing removal, whether or not detained, should have competent counsel. Anecdotal evidence suggests that a major problem exists as to the quality of representation, even in the substantial numbers of non-detainee cases where relief ultimately is obtained. One indicator of the extent of this problem is that there are currently 52 New York attorneys who have been either expelled or suspended by EOIR from the practice of law before the immigration courts and the Board of Immigration Appeals.⁴ Indeed, anecdotal evidence suggests that the success rates at 26 Federal Plaza are in no small measure attributable to the robust role played by many judges in ensuring that incompetent counsel do not harm respondents. In all too many cases, the already overburdened immigration judge expends considerable effort doing what the lawyer is supposed to do – for example, developing the record where the lawyer simply lacks experience or, even in the case of experienced counsel, fails to submit documents corroborating the noncitizen’s account, fails to prepare a witness, or to rehabilitate a respondent after a problematic cross-examination. As a consequence, the immigration court functions far less efficiently than it would if there were adequate representation, and thus the integrity of the administration of justice is frustrated.

Increasing the pool of adequate counsel is thus imperative as is addressing the problem of counsel who do not serve their clients well. Concern with the quality of immigrant representation has been noted at all levels of the judicial system. See, for example, Richard A. Posner and Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 STAN. L. REV. 317, 330 (2011) (“the judge groups ... agreed that immigration was the area in which the quality of representation was lowest.”); Robert A. Katzmann, *The Marden Lecture: The Legal Profession and the Unmet Needs of the Immigrant Poor*, 11 GEO. J. LEGAL ETHICS 3, 10 (2008) (“Often times, the reviewing appellate judge, who is constrained at the time the case comes before her, is left with the feeling that if only the immigrant had secured adequate representation at the outset, the outcome might have been different.”); Noel Brennan, *A View From the Immigration Bench*, 78 FORDHAM L. REV., 623, 626 (2009) (“I’ve grown concerned that many attorneys are just not very interested in their work and therefore bring little professional vigor or focus to it.”); Vera Institute of Justice, *Moving Forward: The Role of Legal Counsel in New York City Immigration Courts*, 23-25, <http://www.vera.org/content/moving-forward-role-legal-counsel-new-york-city-immigration-courts> (2000) (noting the poor quality of private representation in contrast to representation by non-profit agencies).

A full report on the NYIRS findings will be forthcoming. For more information on these findings or on the forthcoming report, contact Professor Peter Markowitz at Benjamin N. Cardozo School of Law, 212-790-0340.

⁴ <http://www.justice.gov/eoir/profcond/chart.htm>