

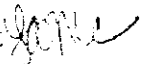
AGENDA ITEM #3(H)
April 17, 2018

INTRODUCTION

M E M O R A N D U M

April 13, 2018

TO: County Council

FROM: Linda McMillan, Senior Legislative Analyst 

SUBJECT: **Introduction:** Special Appropriation to the FY2018 Operating Budget
Montgomery County Government; Department of Health and Human Services;
Legal Representation for Residents Detained for Deportation Proceedings
\$373,957 (Source of Funds: General Fund Reserves)

PURPOSE: Introduction of Special Appropriation for Legal Representation

Attached for introduction at this session, is a Special Appropriation to provide the Capital Area Immigrants' Rights (CAIR) with funding to represent low-income County residents who are detained in immigration proceedings. The County has for many years assisted County residents in need of legal information and assistance by supporting non-profit partner organizations such as Ayuda, CASA de Maryland, Catholic Charities, the Montgomery County Bar Foundation, and more recently Kids in Need of Defense (KIND). CAIR Coalition, will provide a specific service, screening and legal representation for County adult residents who are detained while in deportation proceedings.

The Vera Institute in its evaluation of the New York Immigrant Family Unity Project noted that deportation proceedings are the only legal proceeding where people are routinely detained and are often required to litigate their case without an attorney. Vera projected that legal representation improved the chances a non-citizen would receive a successful immigration court outcome by 1,100%; from 4% to 48%. Legal representation also helped to reunite and preserve families, and allow immigrants to maintain legal work authorization.

The American Immigration Lawyers Association's 2018 report, "COGS IN THE DEPORTATION MACHINE," contains information on policies that have been implemented by President Trump's administration including: increasing the number of undocumented immigrants in danger of deportation because of DACA rescission (689,800) and termination of Temporary Protective Status (248,000); increasing immigration arrests of people with no criminal convictions by 146% from FFY 2016 to FFY 2017 (from 15,353 to 37,734); and, eliminating

“stays of removal” and “orders of supervision” often granted for compelling humanitarian reasons. ICE has detained people who have been in the country for many years at voluntary check-ins, moving quickly to deport them before they have opportunity to make plans for their family.

Most recently, the Department of Justice has announced plans to halt the Legal Orientation Program at the end of April. This program provides information and advice (but not representation) to immigrants at immigration detention centers. The Department of Justice has also announced its intention to include quotas for cases closed and number of appeals in the performance evaluation of immigration judges.

The current model of providing representation to County residents through a pro-bono system is grossly insufficient. The CAIR Coalition screened 65 detained County residents in 2016 but could only represent four. In 2017 only seven could be represented. The CAIR Coalition estimates that there will be between 85 and 90 detained immigrants unable to pay for counsel in 2018.

The \$373,957 that will be provided to the CAIR Coalition will allow the organization to hire attorneys and legal assistants to screen all detained County residents and provide trial-level representation to all eligible people. CAIR Coalition must travel to out-of-county detention centers where County residents are held, most often Anne Arundel, Baltimore City, Frederick County, and Worcester County. CAIR Coalition will work to secure pro-bono counsel for appellate level representation.

Many other jurisdictions have recognized the need to fund legal representation for their residents who are detained and in deportation proceedings. They include Baltimore City, Prince George’s County, New York City, Los Angeles, Oakland, Sacramento, Santa Ana, Atlanta, Columbus, Chicago, Denver, Austin, and San Antonio.

Attached to this packet:	©page
Special Appropriation Resolution	1-3
CAIR Coalition proposal	4-16
Center for Popular Democracy, “Access to Justice: Ensuring Counsel for Immigrants Facing Deportation in the D.C. Metropolitan Area” (2017)	17-40

Resolution No.: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead sponsor: County Council

SUBJECT: Special Appropriation to the Fiscal Year 2018 Operating Budget
Montgomery County Government
Department of Health and Human Services
Legal Representation for Residents Detained for Deportation Proceedings
\$373,957 (Source of Funds: General Fund Reserves)

Background

1. Section 308 of the County Charter provides that a special appropriation is an appropriation which states that it is necessary to meet an unforeseen disaster or other emergency, or to act without delay in the public interest. Each special appropriation shall be approved by not less than six Councilmembers. The Council may approve a special appropriation at any time after public notice by news release. Each special appropriation shall specify the source of funds to finance it.
2. Montgomery County supports its residents by providing funding to non-profit partners that help educate them about the legal rights of immigrants, provide translation and other language services, and connects residents, when possible, to private attorneys that provide pro-bono or low-cost services.
3. The Trump administration has, through its rescission of Deferred Action for Childhood Arrivals (DACA) and termination of Temporary Protected Status (TPS) significantly increased the number of immigrants in danger of deportation. The American Immigration Lawyers Association's report, "Cogs in the Deportation Machine..." also highlights that from Federal Fiscal Year 2016 to 2017, immigration arrests of people with no criminal convictions rose by 146%, "stays of removal" and "orders of supervision" have been eliminated, immigration enforcement is occurring at courthouses and sensitive venues such as places of worship, undocumented adult sponsors of unaccompanied children have been targeted, and performance measures for immigration judges have been tied to numbers of cases completed to pressure judges not to grant continuances to secure legal representation.

4. Recently the Justice Department has announced that Immigration Judges will be evaluated based in part on whether they clear 700 cases per year and have fewer than 15% of decisions reversed by the appeals court. The Department has also announced it is halting the Legal Orientation Program (LOP) as of April 30, 2018. LOP provides essential information to immigrants on how to navigate the legal system. A 2012 Department of Justice evaluation of LOP found it was a cost-effective way to promote due process.
5. The Vera Institute, in its evaluation of the New York Immigrant Family Unity Project, noted that deportation proceedings are the only legal proceeding where people are routinely detained and are often required to litigate their case without an attorney. Vera projected that legal representation improved the chances a non-citizen would receive a successful immigration court outcome by 1,100%; from 4% to 48%. Legal representation also helped to reunite and preserve families, and allow immigrants to maintain legal work authorization.
6. The Capital Area Immigrants' Right (CAIR) Coalition reports that in the Baltimore Immigration Court, which is where most County residents are held, 81% of people in removal proceedings were unrepresented between 2010 and 2015. During that same period, if a person had representation, their chances of obtaining relief quadrupled.
7. The current model of providing representation through a pro-bono system is grossly insufficient. The CAIR Coalition screened 65 detained County residents in 2016, but could only represent four. The CAIR Coalition estimates that there will be between 85 and 90 detained immigrants unable to pay for counsel in 2018.
8. The Council recommends that \$373,957 be appropriated to allow the Department of Health and Human Services to enter into a contract with the CAIR Coalition to fund a pilot program to provide direct legal representation to county residents that are detained for deportation proceedings.
9. Notice of public hearing was given and a public hearing was held.

Action

The County Council for Montgomery County, Maryland, approves the following action:

A special appropriation to the FY18 Operating Budget of the Montgomery County Government in the amount of \$373,957 is approved as follows:

	<u>Personnel Expense</u>	<u>Operating Expense</u>
Department of Health and Human Services	\$0	\$373,957

The Source of Funds is General Fund Reserves. This appropriation is needed to act without delay in the public interest.

It is the Council's intent that this contract will allow any county resident detained for immigration proceedings to be screened for services. Legal representation will be provided to people from households with incomes at or below 200% of the Federal Poverty Level or with a financial hardship. During the course of representation of Montgomery County residents, CAIR Coalition will not use County Government funds to provide legal services beyond eligibility screening to any client or resident of the County who has a final criminal conviction for the following Maryland statutes (or an analogous statute from another jurisdiction) unless the CAIR Coalition provides a documented affirmative finding that the individual has a potentially meritorious claim for immigration relief from removal in the form of a claim to United States citizenship, protection under the Convention Against Torture, U/T Visa, or Refugee Adjustment:

- § 2-201 Murder in the First Degree
- § 2-203 Murder in the First Degree – Sentence of Imprisonment for Life without the possibility of Parole
- § 2-204 Murder in the Second Degree
- § 2-205 Attempt to Commit Murder in the First Degree
- § 2-206 Attempt to Commit Murder in the Second Degree
- § 2-209 Manslaughter by Vehicle or Vessel (gross negligence)
- § 3-303 Rape in the First Degree
- § 3-304 Rape in the Second Degree
- § 3-305 Sexual Offense in the First Degree
- § 3-306 Sexual Offense in the Second Degree
- § 3-309 Attempted Rape in the First Degree
- § 3-310 Attempted Rape in the Second Degree
- § 3-403 Robbery with a Dangerous Weapon
- § 3-405 (c) Armed Carjacking
- § 3-502 Kidnapping
- § 3-503 Child Kidnapping
- § 3-601 Child Abuse of a Minor in the First Degree
- § 3-602 Sexual Abuse of a Minor
- § 9-804 Participation in Criminal Gang
- § 9-805 Criminal Gang
- § 11-303 Human Trafficking
- § 11-305 Abducting a Child under 16 for Prostitution

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council



*Fighting for equal justice for all immigrants
at risk of detention and deportation*

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PROPOSAL FOR UNIVERSAL FUNDING FOR DEPORTATION DEFENSE OF MONTGOMERY COUNTY RESIDENTS IN IMMIGRATION DETENTION BY THE CAPITAL AREA IMMIGRANTS' RIGHTS COALITION

Introduction

The Montgomery County government does not currently provide funding for the direct legal representation of County residents who are noncitizens and in removal¹ proceedings at the immigration court trial-level (hereinafter referred to as “deportation defense”). The Resilience Fund,² managed by the Greater Washington Community Foundation and established, in part, to provide legal assistance to Montgomery County residents, likewise does not fund full-scale deportation defense.³ While the Montgomery County government and the Resilience Fund provide funding for general immigration legal services,⁴ this funding does not pay for legal representation of detained noncitizens. This proposal asks the County Council to address this gap in services by allocating funds for a pilot program that would provide universal legal representation to noncitizens who are residents of Montgomery County and are detained by Immigration and Customs Enforcement (ICE) during their immigration court proceedings.

The Problems

I. No Right to An Attorney in Immigration Court

There is no right to appointed counsel in immigration court.⁵ In the Baltimore Immigration Court, which most often has jurisdiction over Montgomery County residents, 81% of immigrants

¹ Colloquially known as “deportation.”

² The Resilience Fund, Greater Washington Community Foundation, (last accessed March 1, 2018), <https://www.thecommunityfoundation.org/resiliencefund/>.

³ In July of 2017, the Capital Area Immigrants' Rights Coalition (CAIR Coalition) applied and received \$30,000 from the Resilience Fund to support the organization's Community Conversation's project, which provides “Know Your Rights” presentations in partnerships with area schools and immigrant communities, and to support increased growth in the representation of clients requesting bond. These funds did not go to representation of any detained person's case beyond the bond proceeding.

⁴ Those services include citizenship workshops, immigration legal consultation clinics, etc.

⁵ 8 U.S.C. § 1362 (West 2018) (“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 . . .”).

in removal proceedings were unrepresented between 2010 and 2015.⁶ During that same period, when an attorney represented an immigrant facing removal in Baltimore's immigration court, their chances of obtaining relief quadrupled.⁷ Other research⁸ supports these findings and concludes that noncitizens who are represented by an attorney are significantly more likely to identify, apply for, and receive immigration relief.⁹ Thus, for the majority of noncitizens, the difference between remaining with their families in the United States and deportation is an attorney.

II. Significant Increase in Domestic Immigration Enforcement & Adverse Changes to Immigration Policy

The Trump Administration has drastically increased immigration enforcement within our nation's borders by arresting, detaining, and placing higher numbers of immigrants into removal proceedings. In FY 2017, ICE increased the number of immigrants it arrested in immigration raids by 32 percent (30,348 to 40,066) and the number of overall arrests by 30 percent (110,104 to 143,470).¹⁰ There will be a significant uptick in removal cases from Montgomery County in particular when Temporary Protected Status (TPS) for immigrants from El Salvador and Honduras end over the course of the next two years. There are approximately 8,880 TPS holders living in Montgomery County.¹¹ Statewide, the loss of almost 20,000 TPS recipient workers will result in a \$1.9 billion loss in Maryland's GDP, annually, and \$19.9 billion over a decade.¹² Similarly, there are upwards of 13,000 Montgomery residents who hold or are eligible for Deferred Action for Childhood Arrivals and, as a result of the program's rescission, will be subject to arrest and

⁶ Maggie Corser, *Access to Justice: Ensuring Counsel for Immigrants Facing Deportation in the D.C. Metropolitan Area* 9, Center for Popular Democracy, April 5, 2017, available at <https://populardemocracy.org/news-and-publications/legal-aid-could-save-thousands-immigrants-dc-area-deportation> [hereinafter "CPD Report"]. Given the directly relevant data and findings contained in this report, this report is also attached in Appendix B.

⁷ *Id.* at 1.

⁸ UNIVERSITY OF PENNSYLVANIA LAW REVIEW, *A National Study of Access to Counsel in Immigration Court*, December 2015 (data collected between 2007- 2012) (Study based on 1.2 million immigration removal cases decided during 2007- 2012 (6 year period))

⁹ Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council, Sept. 28, 2016, available at <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

¹⁰ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Fiscal Year 2017 ICE Enforcement and Removal Operations Report (Dec. 13, 2017), <https://www.ice.gov/removal-statistics/2017>.

¹¹ COUNTYSTAT, MONTGOMERY COUNTY, Temporary Protected Status in Montgomery County (forthcoming 2018), available at <https://reports.data.montgomerycountymd.gov/countystat>.

¹² *Id.*

deportation.¹³ Moreover, as deportation tears Montgomery County families apart, the County will bear the increasing fiscal burden of rising social services to those family members left behind; already, the state of Maryland incurs \$571,100 in children's health care costs and \$327,800 for foster care costs for families separated because of deportation.¹⁴

The Trump Administration's draconian enforcement activities have also increased the number of Montgomery County residents facing removal who are in ICE detention. In 2016, the Capital Area Immigrant Rights Coalition (the CAIR Coalition), a legal services organization dedicated to providing direct representation to detained immigrants in the DMV area, screened 65 unrepresented adult residents of Montgomery County. In 2017 (data finalized as of February 2018), the organization screened 82 unrepresented adult Montgomery County residents.¹⁵ In the first two months of 2018, the CAIR Coalition has already screened 17 County residents; the organization anticipates a similar increase this year, projecting the total number of Montgomery County adult residents requiring representation will be approximately 85 to 90 people.¹⁶

III. Detained Immigrants Are At Greater Risk of Remaining Unrepresented By Counsel

Detained immigrants are at greater risk of remaining unrepresented than non-detained immigrants. As detained immigrants are held at government expense, cases are adjudicated more quickly and the life of an individual trial case lasts only six months. This short timeframe allows little time for the detainee to find and hire counsel, particularly given the inherent logistical challenges of detention. Detained family members are usually the primary breadwinner or the

¹³ Sarah Hooker and Michael Fix, *County-Level View of DACA Population Finds Surprising Amount of Ethnic & Enrollment Diversity*, Migration Policy Institute, Sept. 2014, available at <https://www.migrationpolicy.org/news/county-level-view-daca-population-finds-surprising-amount-ethnic-enrollment-diversity> (Click on "Profiles for 111 Counties + Ranges of Error").

¹⁴ CPD Report, *supra* note 6.

¹⁵ The CAIR Coalition provides services to both detained adults and children and only screens immigrants who have not privately retained lawyers. The CAIR Coalition already receives federal funding to provide direct representation to children in detention and children who are released and reunify with family in specific geographic zones, including Montgomery County. As a result, this proposal focuses on removal representation of unrepresented adult County residents only because this is the gap in services.

¹⁶ In the experience of the CAIR Coalition, less than 10 percent of the adults who they screen manage to obtain private counsel. This is because while the CAIR Coalition encounters many immigrants in detention, including those who are represented or with the means to hire an attorney, as part of their jail service process the CAIR Coalition staff screens-out this population of detained immigrants from the intake process. As a result, the people screened by CAIR Coalition are very often adult immigrants who are unrepresented and cannot afford to pay for private counsel.

primary caretaker. Thus, the reduction in income and increased burden on the family as a result of detention makes retaining a lawyer for a family of modest means almost impossible.

Some detainees are eligible for bond, though the focus of recent ICE enforcement has been on detainees with prior orders of removal who are not bond eligible. Without a lawyer, immigrants who are eligible for release on bond while their removal case is pending cannot effectively advocate for and receive affordable bond. Moreover, since 2017, the CAIR Coalition has anecdotally observed an increased average in bond amounts issued by the Baltimore Immigration Court judges. The average bond amount before 2017 was between \$4,000 to \$8,000 dollars. Since 2017, the average bond amount grew to between \$6,000 to \$14,000. Higher bond amounts are much more common place. As a result, even if an immigrant successfully obtains bond, many cannot afford to pay it. This prevents an immigrant, who might otherwise be able to work and hire an attorney, from being able to do so. The result is that many more immigrants remain in detention and without the means to obtain legal representation.

IV. The Pro-Bono Model is Insufficient

The current model employed by the CAIR Coalition of providing free legal counsel to detained immigrants who cannot afford counsel is primarily through a pro bono system, where attorneys volunteer their time to take a small number of cases for no cost. This model, however, is grossly insufficient and severely underserves existing need. The pro bono model only provides representation to a small percentage of cases. For example, of the 65 Montgomery County residents screened by the CAIR Coalition in 2016, pro bono counsel was only able to represent four people. In 2017, that number was seven people. Moreover, CAIR's work does not end once it finds a pro bono attorney. Because most pro bono attorneys are not immigration lawyers, the CAIR attorney must actively vet cases, supervise, and provide mentorship to ensure effective representation. The existing pro bono model is therefore not only insufficient, but also inefficient on its own as a solution to the lack of representation in Montgomery County.

Proposal

V. Fund Representation for all Detained Montgomery County Residents

To address the gaps in the legal services for immigrants in Montgomery County, the County Council should allocate funds to a pilot program that provides universal representation of

County residents who are detained by ICE while their removal proceedings are pending and cannot afford to pay for a lawyer.

Prince George's County and Baltimore City recently joined a growing number of states, counties, and cities in allocating funds to provide legal representation for residents facing deportation.¹⁷ While funding models vary, with many including public-private partnerships, deportation defense programs generally fund direct representation of detained immigrants. Focusing funding on detained immigrants not only benefits immigrant themselves, their families, and their communities, but also comports with the core values of justice and due process that are so critical when individuals are deprived of their liberty and threatened with permanent separation from their families.

Moreover, attorneys providing high quality representation will facilitate accountability and challenges to the many due process violations associated with detained immigrants. For instance, the attorneys representing ICE commonly object to issuance of a bond or low bond as a matter of policy, and immigration judges usually defer to this position, regardless of the unique circumstances or compelling equities of a case. Consistent and zealous representation by attorneys could, over time, convince immigration judges that an immigrant's "ability to pay" should be (as it is currently not) a determinative factor for the judge to consider when setting a bond amount. Increased representation could also push back against the deplorable practice of shackling the hands, arms, and feet of immigrants during their court appearance. By contrast, in criminal court, even convicted criminals are unshackled during their court appearances. Only the presence of attorneys consistently objecting to these abusive and unnecessary practices can effectuate the necessary systemic change.

The CAIR Coalition is the primary legal service provider that represents detained immigrants in the DMV and is the only legal service provider with the capacity to do so now. The CAIR Coalition is also the only legal service provider with full access to local ICE detention centers based on its Legal Orientation contracts with the Department of Justice. For this fiscal cycle, the CAIR Coalition submitted a grant proposal for \$100,000 to the Montgomery County Executive and County Council to hire an attorney to represent approximately 35 detained

¹⁷ These jurisdictions include: Alameda, San Francisco, Los Angeles, Contra Costa, Santa Clara counties in California; New York City County in New York; and close to a dozen different cities through Vera's "SAFE Cities Network. SAFE Cities Network, Vera Institute of Justice, 2018, <https://www.vera.org/projects/safe-cities-network>.

Montgomery County residents who pass an indigence screening. If granted, this amount, while helpful, will unfortunately not be sufficient represent the entire estimated detained population in Montgomery County for 2018 who cannot afford a lawyer.

Providing universal representation to all Montgomery County residents detained by ICE would cost \$373,957. With this funding CAIR would: (a) hire two staff attorneys at 100% time spent on representation; (b) pay 75% of salary for a supervising attorney with 75% of their time spent on representation and supervision of attorneys and staff; (c) hire two legal assistants with 100% time spent on assisting the attorneys in representing people with administrative responsibilities or case work; and (c) and cover organizational administrative and overhead related costs. See Appendix A, Proposed Budget

A review of 2016 and 2017 detention statistics and general staffing and administrative costs related to representing all detained Montgomery County residents shows full representation is possible given that the scalable number of county residents being detained and who are unable to pay for counsel are projected to be between 85 to 90 people for 2018.

Each staff attorney would represent 35 people with the assistance of a legal assistant, while the supervising attorney would take the remainder of 15 to 20 cases.¹⁸

Staffing	Estimated People Represented	% of Time Spent on Legal Representation of County Detained Immigrants
Staff Attorney	35 people	100 %
Staff Attorney	35 people	100 %
Supervising Attorney	15-20 people	75 %
Legal Assistant	35 people	100 %
Legal Assistant	35 people	100 %

The proposed funding would cover representation for the trial portion of the detained noncitizen's immigration case and would not necessarily include appellate level representation. The CAIR Coalition would allocate representation at the appellate level based on factors related to viability of the appeal and available resources, but this type of appellate representation would

¹⁸ The supervising attorney has a smaller case load to account needed for the time to supervise and train other attorneys.

not be prioritized through the proposed funding. To ensure appellate representation is not foreclosed, the CAIR Coalition would supplement this trial-level representation by securing pro bono counsel at the appellate level. Pro bono counsel is more generally available to represent immigrants in the appeals aspect of a case as opposed to trial, and the number of appealed cases tends to be lower as represented noncitizens succeed at greater frequencies in their case at the trial level.

Representation at the immigration court trial level would incorporate all available defenses and immigration relief available under our nation's immigration law, including bond, voluntary departure, review of reasonable or credible fear interviews, motions to reopen or terminate proceedings, stay of removal, asylum, withholding of removal, cancellation of removal, adjustment of status, U nonimmigrant status, etc. The CAIR Coalition has experience and expertise in litigating these subject areas given their decades of experience in the detained legal services area and vast technical training providing to immigration attorneys.

In order to qualify for direct representation through the Montgomery County pilot project the CAIR Coalition would screen detained adult immigrants to ensure county residence and indigence. In the course of offering representation, CAIR Coalition would request information on household income to verify whether the person's income is below 200 percent of the federal poverty guidelines¹⁹ and any information about circumstances creating a financial hardship (e.g. medical or mental health crises creating significant expenses, eviction, death or injury in family). As a matter of policy, the CAIR Coalition presumes a detained initially screened immigrant is indigent due to the financial hardships caused by detention itself, but this is the first step in the process supplemented by information learned during the intake and after. Indigence screening is already incorporated as part of the CAIR Coalition's intake method in general and two pilot representation projects that provide direct representation to Prince George's County and Baltimore City residents.

VI. Assist Non-detained Immigrants Through a Partnership With The CAIR Coalition and a Deportation Defense Fund

While the focus of this proposal is on providing deportation defense to *detained* Montgomery County residents, this proposal seeks to assist non-detained immigrants in removal

¹⁹ This is the baseline for determining income-based need employed by the Legal Aid Society and various other local nonprofit organizations.

proceedings in two key ways. First, because of direct representation at bond hearings by the CAIR Coalition, it is likely that some County residents will likely be released on bond. To best utilize the CAIR Coalition's resources and the expertise of other organizations who serve non-detained immigrants, the CAIR Coalition will collaborate with and refer released clients to two legal service providers: AYUDA and Catholic Charities of the Archdiocese of Washington. These providers will screen referred cases and, if the cases meet their organization's representation criteria,²⁰ the CAIR Coalition would negotiate a per-case fee to pay²¹ those organizations out of the money allocated to the CAIR Coalition by the County. AYUDA or Catholic Charities would then assume the representation of those individuals for the duration of their cases. This collaboration has several intended results:

- allows for continuous representation of previously detained clients by various organizations beyond the CAIR Coalition;
- avoids the referral of cases through an unfunded mandate; and
- refers non-detained clients to the organization that best fits their need based on their structure and legal expertise.

Beyond this small subset of cases, this proposal does not request funding for pilot representation of non-detained Montgomery County residents facing removal. This proposal focuses on detained immigrants because there are a small number of legal service providers capable of providing deportation defense representation and a large number of non-detained county residents in removal proceedings.²² Moreover, the duration of a non-detained removal case is typically several years due to the significant backlog of cases (nearly 675,000 nationwide), making a pilot project for this population based on a one-year allocation of funds challenging.²³

²⁰ Based on their current service models both AYUDA and Catholic Charities intend to screen cases based on the following criteria: income-based means screening; staff availability; likelihood of obtaining relief; and, in the case of AYUDA, likelihood of obtaining relief that results in family preservation in the United States.

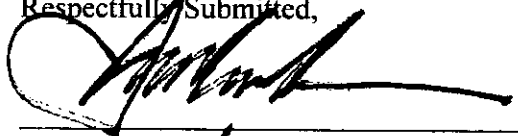
²¹ This payment amount will be determined by the organizations and will come out either from proposed litigation costs or from funds dedicated to the supervising attorney's salary.

²² Hot Spots with Highest Growth in Immigration Court Backlog, TRAC, Dec. 2017, <http://trac.syr.edu/immigration/reports/497/> (Noting that there were 8,460 pending immigration court cases involving Montgomery County residents as of December 31, 2017).

²³ Immigration Court Backlog Tool, TRAC, Dec. 2017, http://trac.syr.edu/phptools/immigration/court_backlog/ (Noting that the immigration court backlog is 667,839 as of December 2017).

Looking towards future fiscal cycles to meet the funding needs for non-detained deportation defense and to decrease the county's financial responsibility for detained deportation defense, this proposal urges the county to assist in the creation of a deportation defense fund. This fund would be a private/public partnership that could replace the above-requested CAIR Coalition grant in future years and disburse multi-year grants to other legal service providers to establish more robust non-detained removal practices. A private foundation would establish and administer the fund. While the County could continue annual disbursements into the fund, other private foundations and individual donors could contribute as well.

Respectfully Submitted,



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Date: March 7, 2018

The Capital Area Immigrants' Rights Coalition wishes to acknowledge the following people for their input on this proposal:

Gabriela Kahrl, Staff Attorney, Immigration Clinic, University of Maryland Carey School of Law
Jaqueline Rishty, Director of Immigration Legal Services, Catholic Charities Archdiocese of Washington
Joanna Silver, Montgomery County Deportation Defense Coalition
Jose Magaña-Salgado, Masa Group
Susannah Volpe –Associate Director, DC Immigration, Ayuda

APPENDIX A

**Capital Area Immigrants' Rights (CAIR) Coalition
Proposed Budget**

Total Proposed Budget:	\$ 373,957.56
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FTE Adjustment Rate 0.12 = 4.95/43 (total organizational FTEs)

Staff Member	Annual Salary	FTE%	Contract Salary	Annual Fringe	Sub Total
Senior Staff Attorney	\$ 63,000.00	75%	\$ 47,250.00	\$ 9,450.00	\$ 56,700.00
Staff Attorney	\$ 55,800.00	100%	\$ 55,800.00	\$ 11,160.00	\$ 66,960.00
Staff Attorney	\$ 55,800.00	100%	\$ 55,800.00	\$ 11,160.00	\$ 66,960.00
Legal Assistant	\$ 45,300.00	100%	\$ 45,300.00	\$ 9,060.00	\$ 54,360.00
Legal Assistant	\$ 45,300.00	100%	\$ 45,300.00	\$ 9,060.00	\$ 54,360.00
Administrative Support	\$ 44,000.00	20%	\$ 8,800.00	\$ 1,760.00	\$ 10,560.00

Total Cost of Salary & Fringe Benefits:	\$ 309,900.00
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Item	Annual Total	At .12 FTEs
Rent	\$ 213,039.00	\$ 25,564.68
IT services/support	\$ 20,600.00	\$ 2,472.00
Internet/Data	\$ 17,424.00	\$ 2,090.88

Total Overhead and Rental Costs:	\$ 30,127.56
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Item	Est. Amount	Number	Sub Total
Experts	\$ 1,200.00	13	\$ 15,600.00
Other Related Litigation Expenses*	\$ 9,000.00	--	\$ 9,000.00

* Includes third language interpretation and translation costs, potential payment to non-detained providers, application fees

Total Litigation Costs:	\$ 24,600.00
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Item	Est. Amount	Total Number	Sub Total	At .12 FIEs
Bar Dues	\$250	3	\$ 750.00	\$ 90.00

Total Cost of Bar Dues:	\$ 90.00
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Item	Est. Amount	Number	Sub Total
Laptops	\$ 650.00	5	\$ 3,250.00
Phones*	\$ 190.00	5	\$ 950.00

* Phones at \$100 value with \$90 installation fee

Total Cost of Equipment:	\$ 4,200.00
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Trips for every other month

Trips for every other month

Trips for every other month

Four monthly trips for 12 months

Travel Location	Zipcar Rate* (a day)	Number	Sub Total
Worcester County Detention Center	\$ 150.00	6	\$ 900.00
Frederick County Detention Center	\$ 69.00	6	\$ 414.00
Howard County Detention Center	\$ 69.00	6	\$ 414.00
Baltimore Immigration Court	\$ 69.00	48	\$ 3,312.00

* CAIR Coalition bills based on daily Zipcar rates and not the IRS mileage rates.

Total Cost of Travel:	\$ 5,040.00
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APPENDIX B

MARCH 2017

ACCESS TO JUSTICE:

Ensuring Counsel for Immigrants Facing Deportation in the D.C. Metropolitan Area

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Executive Summary

Every year, thousands of immigrant community members in the D.C. metropolitan area face detention and deportation because they cannot afford a lawyer. Many of these individuals have legal claims they could assert for their right to remain in the United States. However, without the assistance of legal counsel to help navigate the extremely complex area of immigration law, they are unable to articulate those claims to an immigration judge. Even though deportation is one of the most serious legal consequences that a person can face, and despite the fact that immigrants may be jailed for the duration of their immigration court proceedings, immigrants facing deportation have no established constitutional right to appointed counsel. As this report illustrates, individuals without lawyers face significant challenges and rarely receive favorable immigration court outcomes. Among detained immigrants without lawyers in the D.C. metropolitan area, people in Arlington were only successful in their cases 11 percent of the time and unrepresented people in Baltimore were only successful 7 percent of the time. In stark contrast, having a lawyer in Arlington more than doubled a person's chances of being able to remain in the U.S. and quadrupled a person's chance of obtaining relief in Baltimore.

A person's case outcome should be determined by the merits of his or her claim, not their ability to pay legal fees. **In light of the report findings, the Center for Popular Democracy calls on elected officials, in partnership with service providers, to establish a publicly funded universal representation program for immigrants facing detention and deportation in Arlington, Virginia and Baltimore, Maryland.** After New York became the first city in the country to guarantee legal representation for people in immigration court proceedings, immigrants' chances of winning their cases increased by 1,000 percent. A growing number of cities around the country have passed or are considering similar programs in recognition of both the human and financial toll of

The Will to Surmount: The Impact of Legal Representation for One Local Maryland Family

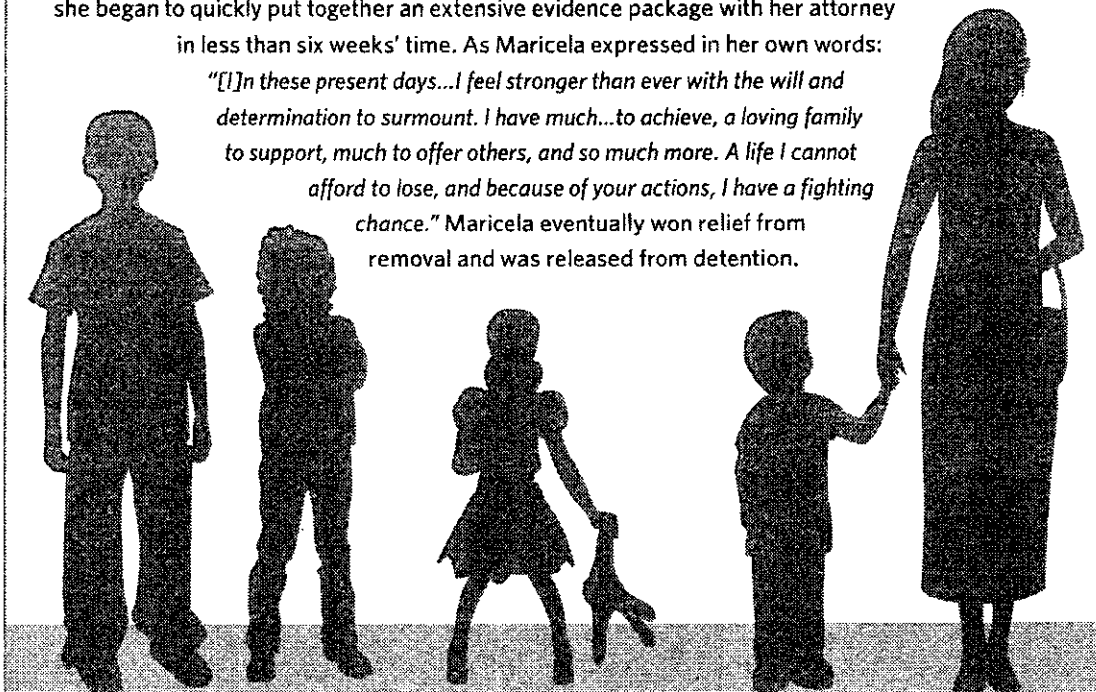
In 2016 Maricela,¹ a mother of four young U.S. citizen children, was facing immigration detention and deportation. A long-term lawful permanent resident (or “green card holder”) who had lived in the U.S. since she was eight years old, Maricela was introduced to pain-killers as an adult after being hospitalized for an accident and subsequently developed an unhealthy pain-killer dependency. After she was convicted for possession of a controlled substance on two separate instances, Immigration Customs and Enforcement placed Maricela in removal proceedings and detained her at the Worcester County Jail, a remote facility three and a half hours away from Washington D.C., on the eastern shore of Maryland.

Despite being fluent in English, she felt overwhelmed asking the judge for help. She was uneasy submitting an application for relief. Though she had taken a month to prepare the application, she felt it was riddled with errors. Maricela felt desperation and anxiety over her impending deportation to a country she did not know. She worried about the permanent separation she faced from her four minor children and felt tremendous grief, shame, and pain as she contemplated her family's future and her own fate. She feared appearing alone in court, and having to expose the intimate details of her life in front of a judge and an attorney from the government who was seeking to deport her.

With the help of a local legal service organization, the Capital Area Immigrants' Rights (CAIR) Coalition, Maricela secured a pro bono attorney to represent her case. Maricela's spirit and demeanor greatly changed. Her panic seemed to subside as she focused her energy on fighting her case, taking the steps necessary to rebuild her life, and engaging in critical thinking with her attorney about relevant evidence and witnesses to provide in her defense. Previously, CAIR Coalition staff had encountered difficulty in helping Maricela focus on creating a plan of action to gather evidence and represent herself. However, after counsel was secured, she began to quickly put together an extensive evidence package with her attorney

in less than six weeks' time. As Maricela expressed in her own words:

“[I]n these present days...I feel stronger than ever with the will and determination to surmount. I have much...to achieve, a loving family to support, much to offer others, and so much more. A life I cannot afford to lose, and because of your actions, I have a fighting chance.” Maricela eventually won relief from removal and was released from detention.



detention and deportation. Access to counsel not only ensures the legal process is fair, it ensures the process is efficient, with qualified lawyers effectively navigating the courtroom and judges receiving fewer requests for delays in hearings as well as appeals. Finally, legal counsel helps immigrants avoid unnecessary detention which, at an estimated \$158 per day to detain one immigrant, is a costly and inefficient use of taxpayer dollars.

Guaranteed access to counsel will ensure immigration proceedings reflect core U.S. values of justice, due process, and fair outcomes. Since President Trump took office in January 2017, the need to provide a fair court process for immigrants in removal proceedings is more urgent than ever. Within President Trump's first week in office, the new administration began taking steps to increase the already record high number of annual deportations, issuing a slate of constitutionally questionable executive orders directing the expansion of the deportation dragnet and of detention capacity. Within the first two weeks, communities began reporting Immigration Customs and Enforcement raids in their courthouses, places of employment, and homes. Since the inauguration, several cities—including the District of Columbia—have announced their intention to create deportation defense funds to support those targeted by the President's policies.

The negative consequences of mass deportation are not limited to deported individuals and their loved ones. Immigrants are a vibrant part of the local D.C. metropolitan area, contributing to the social and cultural fabric and boosting the local economy. Harsh immigration enforcement impacts people who are torn apart from their families, small-business owners and workers who lose their livelihoods, as well as local employers and city and state governments who incur numerous costs and negative economic impacts stemming from over-enforcement. Based on our projections, every year Virginia state employers pay an estimated \$6 million, and Maryland employers an estimated \$5.9 million, in avoidable turnover-related costs as they are forced to replace detained or deported employees. In addition to the devastating human costs of family separation, cities and states often incur costs to public health insurance programs and foster care services when children of immigrants are detained and deported—based on estimates, this costs the state of Virginia nearly \$1 million and the state of Maryland nearly \$900,000 every year.

Family unity contributes to social and economic stability. When families thrive, it reduces the long-term costs to both states and cities that provide public services. An access to counsel program will demonstrate the commitment of local policymakers to their immigrant constituents—which is particularly crucial at a time when we anticipate much more aggressive immigration enforcement—and reduce the dramatic disparities in outcomes in removal proceedings for those detained immigrants who do not have legal representation.

Key Findings

- Immigrants in the United States have no federal right to appointed counsel in immigration court. This violates fundamental legal safeguards including due process and equal treatment under the law. Despite the fact that many of these individuals have valid claims to stay in the U.S., many detained immigrants are ultimately deported because they cannot afford a lawyer and are unable to navigate the notoriously complex immigration court system and laws on their own.
- Every year, nearly 4,000 people in Washington, D.C. metropolitan area courts, Arlington, Virginia, and Baltimore, Maryland, face deportation in civil immigration court without the assistance of a lawyer. Based on original data analysis of Department of Justice records obtained through a Freedom of Information Act request, seven out of ten detained individuals in immigration court removal proceedings in Arlington, VA and eight out of ten in Baltimore, MD did not have any legal representation.
 - People without lawyers faced enormous odds in fighting their deportation cases. Among detained immigrants without lawyers, people in Arlington were only successful in their cases 11 percent of the time and unrepresented people in Baltimore only successful 7 percent of the time.
 - Having a lawyer in Arlington more than doubled a person's chances of being able to remain in the U.S. and quadrupled a person's chance of obtaining relief in Baltimore.
- Between 2010 and 2015, Immigration and Customs Enforcement (ICE) detained nearly 15,000 people in local and county jails² throughout the states of Maryland and Virginia. In both regions, people who did not have lawyers were more than twice as likely to remain detained during the entirety of their immigration case, even if they may have been eligible for release on bond.
- Detention and deportation can tear apart families and destabilize our economy. It impacts small-business owners and workers who lose their livelihoods, as well as local employers and city and state governments who incur numerous costs from disruption to businesses and our economy.
- After New York became the first city in the country to guarantee government-appointed legal representation for detained immigrants who could not otherwise afford a lawyer, immigrants' chances of winning their cases increased by 1,000 percent.³ Many of the individuals who obtain access to counsel are long-time, lawful permanent residents with deep ties to their communities. As a result of its success, this program expanded throughout the state of New York and a growing number of areas around the country are now considering similar programs.

Introduction

While deportation is one of the harshest punishments an individual can face under U.S. law, immigrants currently have no right to government-appointed counsel in immigration court during removal proceedings. In practice, this means that the vast majority of immigrants who are detained and facing deportation cannot afford to hire a private attorney. Eighty-six percent must fend for themselves in a complex legal system alone against a government-trained lawyer.⁴ They must represent themselves in a high stakes court setting, often in their non-native language, with limited ability to obtain and present supporting evidence and legal arguments to make a case. The individuals range from asylum seekers and survivors of trafficking and domestic violence, to individuals who overstayed visas or entered without authorization, to lawful permanent residents who are deeply rooted in their communities.⁵ Regardless of the circumstances that lead a person to immigration court, individuals without lawyers face significant challenges and rarely receive favorable immigration court outcomes. This is particularly the case for immigrants who are detained by ICE. Despite valid claims to stay in the U.S., many detained immigrants are ultimately deported.⁶

While all criminal defendants in the U.S. have a constitutionally-protected right to legal representation, this right is not extended to individuals in immigrant courts. Immigration proceedings are considered civil in nature (no violation of criminal law is at stake) with penalties that are supposed to be non-punitive; however, as the Supreme Court acknowledged in the landmark 2010 decision *Padilla v. Kentucky*, immigrants face a severe punishment of deportation. This results in a system which, for many, means the possibility of death or permanent exile from loved ones in the U.S.—without the same level of due process of those in criminal court.⁷ This is true despite the fact that immigrant detainees often face identical conditions to U.S. citizens who are incarcerated in prisons. In fact, the majority of people detained based on civil immigration law are held in county jails, often the same facilities where individuals are serving sentences for criminal convictions. People held in immigration detention can be jailed indefinitely without the constitutional protection of appointed counsel.

Over the last twenty years, the number of immigrants ICE detains each year has increased exponentially. Eight times the number of people are now regularly detained each year than were detained in the mid-nineties.⁸ The Trump administration has pledged to drastically expand the number of people detained. Immigration courts are increasingly declining to release immigrants from detention as a way to ensure their attendance at removal proceedings, although numerous alternatives to detention have resulted in positive appearance rates and have been shown significantly less costly and punitive.⁹ For those without a lawyer, this often results in immigrants being needlessly detained, sometimes for months or years, even when they are eligible to be released on bond. While the average length of stay in immigration detention is 33.5 days, many individuals remain behind bars for months or years before their cases are resolved simply because they do not have a lawyer.¹⁰

Not only does being detained make it even more difficult to obtain relief in immigration court, it also imposes a wide range of other burdens on immigrants and their families. Those detained for long periods of time may lose their jobs or even custody of their children. When families lose the primary breadwinner they face compounding levels of poverty and the risk of eviction. In addition, ICE detention facilities are remote, which makes visiting to maintain family unity difficult. Medical care is also notoriously poor, and detained individuals often have difficulty receiving the treatment and medication they need to stay healthy.

Immigrant Communities in the Washington, D.C. Metropolitan Area

Immigrants are a vibrant part of the local Washington D.C. metropolitan area, contributing to the social and cultural fabric and boosting the local economy. Many have deep, longstanding ties to the metropolitan area which extends to and beyond Arlington and Baltimore. One in five metropolitan area residents is foreign-born.¹¹ As of 2013, the D.C. metropolitan area was ranked as the seventh largest concentration of immigrants in the country.¹² Of the almost six million people living in the metropolitan area, 22 percent of the population is foreign-born and over half of that group, 53 percent, are not U.S. citizens.¹³ Since the 1990s, the local immigrant population has hailed from almost 200 countries with the top ten countries of origin including: El Salvador, India, Korea, Mexico, Vietnam, Philippines, China, Guatemala, Peru, and Ethiopia.¹⁴ Forty percent come from Latin America or the Caribbean.¹⁵

The D.C. metropolitan area immigrant community is diverse and includes individuals with lawful permanent residence status (e.g. those with green cards), individuals who are undocumented, as well as some in either of these categories who have past criminal convictions for which they have already served their sentence and demonstrated rehabilitation. They are all affected by an aggressive immigration enforcement environment that relies heavily on detention and deportation and tears apart families. It appears likely that the Trump administration's approach to immigration enforcement will also increasingly affect visa-holders in the metropolitan area. These individuals range from university students pursuing undergraduate and graduate degrees, officials at international agencies like the World Bank, and highly skilled employees in the technology industry. This over-enforcement also hurts small business owners and workers who lose their livelihoods, as well as local employers and city and state governments who see numerous negative economic impacts of punitive detention and deportation.

A Violation of Due Process & Principles of Fundamental Fairness

The Sixth Amendment guarantees all criminal defendants access to legal representation. Unfortunately, this right is not extended to individuals in immigrant courts which are considered "civil" not criminal courts.¹⁶ The Center for Popular Democracy has previously highlighted how immigration court proceedings resemble criminal courts in three important ways:

- 1) They involve direct and severe restrictions on physical liberty;
- 2) A negative outcome results in separation from family and community, and;
- 3) Many immigrants in removal proceedings are confined in county jails and Department of Homeland Security detention centers, in conditions identical to those of criminal defendants.¹⁷

Guaranteeing that every person in a court setting has a lawyer is a fundamental legal safeguard that ensures equal treatment under the law. Unfortunately, people who are in immigration proceedings can only secure legal counsel "at no cost to the government."¹⁸ In practice, this means that the majority of individuals in immigration court, who cannot afford prohibitively expensive legal representation, are

left without any support—this is particularly the case for detained immigrants, the majority of whom are indigent. This represents an enormous failure of the principles of fairness and due process.

As the Department of Justice Executive Office for Immigration Review (EOIR) itself notes, “many individuals who appear before EOIR are indigent and cannot afford a private attorney.”¹⁹ In the D.C. metropolitan area, non-citizens have a median household income of \$37,200 for men and \$31,600 for women.²⁰ This means that most individuals cannot afford prohibitively high legal fees, particularly while detained and unable to work.

The impact of access to counsel is significant: a person is far more likely to successfully defend against deportation if represented by counsel. Nationally, people with lawyers are 15 times more likely to apply for relief from deportation during removal proceedings and have a five-and-a-half times greater chance of getting a successful case outcome.²¹

A person’s case should be determined by the merits of his or her claim, not their ability to pay legal fees. The right to counsel in immigration court is particularly needed as many individuals qualify for legal relief from deportation but do not know because they haven’t been able to consult a lawyer who can help them understand complex immigration laws, resulting in wrongful deportations.²² Providing every immigrant with access to high-quality legal representation would help ensure that immigration court proceedings reflect the principles of due process and fairness and proper application of federal immigration law. In addition to ensuring the legal process is fair, access to counsel ensures the process is efficient, with qualified lawyers effectively navigating the courtroom and judges receiving fewer requests for delays in hearings as well as appeals. Finally, legal counsel helps immigrants avoid unnecessary detention which is a costly and inefficient use of taxpayer dollars.

A person’s case should be determined by the merits of his or her claim, not their ability to pay legal fees.

National Rates of Legal Representation

In 2014, the U.S. government deported a near record high number of immigrants with approximately 414,500 people forcibly removed from their families and communities.²³ When looking at deportation rates over seven years (from 2008-2014), that number skyrockets to nearly 2.8 million people.²⁴ Every year the Department of Justice (DOJ) tracks the number of immigrants who secure legal representation at some point in their court processes. Based on the UCLA School of Law’s analysis of DOJ data on 1.2 million deportation cases from 2007 to 2012, it found that “only 37 percent of all immigrants, and a mere 14 percent of detained immigrants, secured representation.”²⁵ An immigrant may request additional time to find counsel (a continuance) and this study found detained immigrants spent an average of 33 days looking for counsel. The majority of individuals are not successful in finding legal assistance which impacts their case outcomes and is costly to the government (it costs an estimated \$158 a day to detain an immigrant), wasting taxpayers’ money and eroding due process.²⁶

In response to these troublingly low rates of representation, and the sharp contrast in successful case outcomes for people with lawyers, advocates have increasingly pushed for reforms. After mounting public pressure, and as a result of several class action lawsuits, the government recently launched pilots to provide legal representation in certain narrow instances. For instance, for individuals who

have “serious mental disorders that render them mentally incompetent to represent themselves in immigration proceedings,” EOIR plans to provide legal representation.^{27,28} Although current law states that unaccompanied immigrant children may be able to access pro-bono legal representatives “to the extent practicable,” in reality the legal language is vague, non-binding, and not implemented nationally.²⁹ The EOIR currently funds a pilot program to provide representation to children in Baltimore; however these types of pilots only exist in select jurisdictions around the country, which leaves many children out.³⁰ There is ongoing litigation to secure the right to counsel for children in immigration court in order to require the appointment of a guardian or advocate to represent a child’s best interests during the court proceedings.³¹

As a result of local and national advocacy efforts, over the last five years the number of people with legal representation nationally has slightly grown. While this is a promising trend, there is still a long way to go. From 2011 to 2015, there were still 436,300 people (representing 47 percent of all cases) without any form of legal representation in immigration court.^{32,33} It’s also important to note that this increase is not across the board, with some cities seeing a decline in representation rates. There is also wide geographic variation, with larger cities having representation rates of approximately 45 percent, and smaller cities, on average, having representation rates of only ten percent.³⁴

Immigration Court Outcomes in the Washington D.C. Metropolitan Area

While the U.S. government releases national statistics on rates of immigrant detention, deportation, and legal representation, this data is generally not broken down by specific courts or jurisdictions. Based on the experience of local legal service providers and immigrant families in the D.C. metropolitan area, there is strong anecdotal evidence that when immigrants have access to legal representation in this area, they have better case outcomes as evidenced by lower rates of detention and deportation.

In order to document and understand the impact of legal counsel on immigration case outcomes, the Center for Popular Democracy requested Department of Justice data. This allowed us to analyze government data on detention rates, court decisions, and rates of representation, which provide a valuable overview of the local trends.

Key Findings

Every year, nearly 4,000 people in Washington, D.C. metropolitan area courts, Arlington, Virginia, and Baltimore, Maryland, face deportation in civil immigration court without the assistance of a lawyer. Because there is no guaranteed access to counsel for immigrants, the majority of people in these courts do not have lawyers. Based on original data analysis of Department of Justice Executive Office for Immigration Review records, obtained through a Freedom of Information Act request, between 2010 and 2015, only 29 percent of detained immigrants secured lawyers in Arlington and only 19 percent of detained immigrants in Baltimore. In other words, among detained immigrants only three out of ten had lawyers in Arlington, and only two out of ten had lawyers in Baltimore.

There are dramatic disparities in outcomes for those who do and do not have lawyers. Among detained immigrants without lawyers, people in Arlington were only successful in their cases 11 percent of the time and unrepresented people in Baltimore only successful 7 percent of the time. **In stark contrast, having a lawyer in Arlington more than doubled a person's chances of being able to remain in the U.S. and quadrupled a person's chance of obtaining relief in Baltimore.**

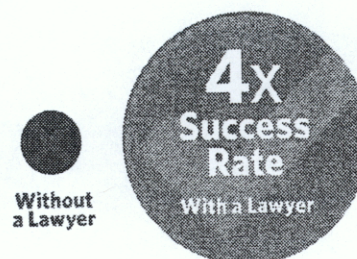
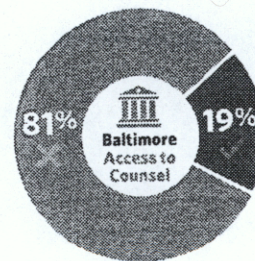
Those who are detained, while fighting deportation, are much less likely to have a lawyer, even though having one has an even greater impact on the outcome of their cases. Between 2010 and 2015, ICE detained nearly 15,000 people in local and county jails throughout the states of Maryland and Virginia. In both regions, people who did not have lawyers were more than twice as likely to remain detained during the entirety of their immigration case, even if they may have been eligible for release on bond. The likelihood of unnecessarily prolonged detention was highest in Baltimore, where a person without a lawyer was more than twice as likely to be detained during their entire case. Our data analysis found that people were much more likely to appeal a negative court decision when they have the support of lawyers. People with an attorney were almost six times more likely to win their cases on appeal in Baltimore and five times more likely in Arlington.

Data at a Glance

As illustrated below, representation has a powerful impact on individual's cases.*

Baltimore

- In Baltimore, **81 percent of detained immigrants had no legal representation at all**; only 19 percent of detained people had legal representation at some point in their case.
- People in detention without lawyers were only successful in their cases seven percent of the time.
- People who did not have lawyers were more than more than twice as likely to be detained during their entire case. They were also less likely to be released from detention than those with lawyers.
- People with lawyers were **4x more likely** to get a successful case outcome.



* Appendix I includes a detailed description of the data analysis methodology and parameters.

Baltimore Representation Status Among Detained Immigrants	Number	Percent
Never Represented	2,100	81%
Represented	496	19%
TOTAL	2,596	

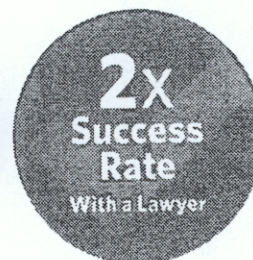
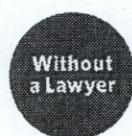
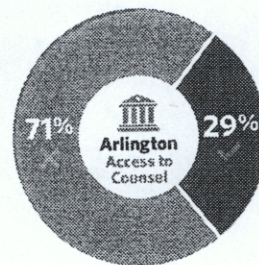
Baltimore Custody Status	Do Not Have a Lawyer	Have a Lawyer	
Detained (Percent)	2100 (21%)	496 (9%)	2,596 (17%)
Partially Detained	2,685 (27%)	1,611 (30%)	4,296 (28%)
Never Detained	5,326 (53%)	3,234 (61%)	8,560 (55%)
TOTAL	10,111	5,341	15,452

Baltimore Detained Case Outcome, by Representation Status	Do Not Have a Lawyer	Have a Lawyer	
Successful	152	143	295
Percent	7%	29%	
Unsuccessful	1,948	353	2,301
Percent	93%	71%	
	2,100	496	2,596

Source: Executive Office for Immigration Review records. Totals from 2010-2015

Arlington

- In Arlington, **71 percent** of detained people had **no legal representation at all**; only 29 percent of detained people had some representation at some point in their case.
- Detained people who did not have lawyers were only successful in their cases 11 percent of the time.
- People with lawyers were **2x more likely** to get a successful case outcome.



Arlington Representation Status Among Detained Immigrants	Number	Percent
Never Represented	3,371	71%
Represented	1,402	29%
TOTAL	4,773	

Arlington Custody Status	Do Not Have a Lawyer	Have a Lawyer	
Detained (Percent)	3371 (34%)	1,402 (22%)	4,773 (29%)
Partially Detained	1,741 (18%)	1,332 (21%)	3,073 (19%)
Never Detained	3,371 (34%)	3,741 (58%)	7,112 (43%)
TOTAL	9,909	6,475	16,384

Arlington Detained Case Outcome, by Representation Status	Do Not Have a Lawyer	Have a Lawyer	
Successful	382	352	734
Percent	11%	25%	
Unsuccessful	2,989	1,050	4,039
Percent	89%	75%	
	3,371	1,402	4,773

Case Study: The Capital Area Immigrants' Rights (CAIR) Coalition

The Capital Area Immigrants' Rights (CAIR) Coalition is a key leader in providing legal defense for detained immigrants in court proceedings in the D.C. metropolitan area. While there are approximately 27 organizations and ten area law school clinics³⁷ providing free or low-cost legal immigration services to immigrants in Virginia, Maryland or D.C., CAIR Coalition is the only organization that provides legal services to detained men and women in the custody of the Immigration and Customs Enforcement or children detained in the custody of the Office of Refugee Resettlement who cannot afford a lawyer. CAIR Coalition's legal services include the provision of "Know Your Rights" presentations, individual consultations, *pro se* workshops for people representing themselves, and *pro bono* counsel for immigrants detained in jails in Maryland and Virginia. Their work to defend immigrants in detention sees a high success rate: they have a 75 percent approval rate for adults and 90 percent approval rate for children.

As the figure below shows, for the past five years, CAIR Coalition has increased its ability to provide *pro bono* counsel to detained immigrants in both jurisdictions, buoyed in part by increased funding for direct representation of children in Office of Refugee Resettlement custody. Despite this uptick, representation rates at CAIR Coalition for adults in immigration detention remains below 100 people each year. This is despite the fact that the detained adult population accounts for more than 75 percent of the total number of people individually screened by CAIR Coalition through legal intakes.

Number of Detained Immigrant Men, Women and Children Provided with Pro Bono Counsel through CAIR Coalition

	2011	2012	2013	2014	2015	2016
Adults	40	41	51	62	79	87
Children	8	12	28	52*	97*	102*
TOTAL	48	53	79	114	176	189

* Number reflects direct funding provided in August of 2014 to represent a subsection of the detained children population in the D.C. metropolitan area.

Number of Detained Immigrant Men, Women and Children Provided Individualized Legal Screening by CAIR Coalition

	2011	2012	2013	2014	2015
Adults	988 (90%)	1,276 (85%)	1,044 (71%)	1,451 (72%)	1,660 (75%)
Children	106 (10%)	222 (15%)	412 (29%)	562 (28%)	546 (25%)
TOTAL	1,094	1,498	1,456	2,013	2,206

Between 2011 and 2015, only seven additional nonprofit organizations were able to represent at least one detained immigrant in either Virginia or Maryland: AYUDA; Catholic Charities in Silver Spring and Gaithersburg, MD; the Esperanza Center in Baltimore, MD; the Hebrew Immigration

Case Study, continued...

Aid Society in Maryland; the Legal Aid Justice Center of Virginia; the Torture Abolition and Survivors Support Coalition; and Whitman-Walker Health and Legal Services. This was usually done in concert with CAIR Coalition's mentoring and assistance and often was a response to ICE detaining a pre-existing client.

Only seven out of the ten area law school immigration clinics have represented detained individuals, often based on a referral agreement with CAIR Coalition, and subject to limitations imposed by the academic school year and low caseloads due to the need for student supervision. The Center for Applied Legal Studies at Georgetown University Law Center is the only clinic that consistently represents a large cohort of detained immigrants, approximately three to five clients per year.

How long a CAIR Coalition client remains in detention varies depending on whether a client can fight for any relief from removal, if the case decision is appealed, and the client's ability to continue fighting while detained on appeal. While the average amount of time in detention is one year for a child, and six to eight months for adults, some CAIR clients have spent three to four years in detention. Given this reality, long distances to the detention facilities remain an ongoing concern for legal service providers. Very few of these providers, including CAIR Coalition, are in close proximity to the detention centers holding immigrants in both states. The providers who are nearby do not visit or provide services to these facilities.

- In Virginia, there are two adult detention facilities, the Farmville Detention Center and Virginia Peninsula Regional Jail. Given both are three hours away from Washington, D.C. and about an hour away from Richmond, Virginia, none of the legal service organizations or law school clinics near Richmond or close to these detention centers provide legal services to detained immigrants.
- In Maryland, there are three facilities that detain immigrants: Worcester County Jail, Howard County Detention Center, and Frederick County Detention Center. Of these, Worcester County Jail is the farthest facility, located three and a half hours away from Washington, D.C. in the eastern shore of Maryland, where there is only one legal immigration service organization nearby that is unable to represent people in removal proceedings.
- While the Howard County Detention Center is less than 45 minutes away from Baltimore City, none of the legal immigration service providers based in the area visit or represent clients at this jail. The closest legal service provider to the Frederick Detention Center is based out of Rockville, Maryland, only 45 minutes away, but that provider does not visit or represent people detained at Frederick.

CAIR reports that the experiences and case outcomes of represented detained immigrants are incredibly different from those immigrants who proceed on their own unrepresented. One crucial difference is in the ability of the detained person to identify their eligibility for relief from removal and apply for relief in a timely manner. When a detained client is represented, a major part of representation at the start of a case is determining whether any challenges to removability exist and identifying all possible forms of relief available. CAIR Coalition reports that it usually takes

Case Study, continued...

two to four weeks to prepare for the first or second preliminary hearing when representing a detained immigrant. In contrast, unrepresented detained immigrants struggle through two to three preliminary hearings totaling in four to six weeks of continuances in an effort to understand the proceedings and prepare to admit or deny the charges of removability or even articulate and complete the forms required to apply for relief.

Even the savviest individuals, who are often fluent in English, have difficulty preserving or making arguments in their cases. Recently, CAIR Coalition met with a detained woman prior to her upcoming hearing in Virginia who was a native English speaker and with a relatively high level of formal education. Despite CAIR providing her with orientation about the possibility that her convictions were not removable offenses and practicing with her how to speak to the judge and deny the allegations of removability, she was ordered removed in a hearing lasting less than seven minutes. While CAIR Coalition was subsequently able to find *pro bono* counsel for an appeal, a review of the transcript showed that she appeared confused about how to answer factual questions and that her fear and lack of confidence contributed to her deferring immediately to the judge when he ignored her pleas denying the removability ground and requests for a continuance to seek counsel. These gaps not only added a procedural difficulty in her case, leading to her appeal, but also significantly lengthened the time of her case.

Another stark difference CAIR Coalition staff have observed between represented and unrepresented detained immigrants is their ability to follow through in putting forth their cases. Despite detention fatigue, many represented clients will often endure long wait times and prolonged detention periods when they have the motivating support of their lawyers. Very few unrepresented detained immigrants actually make it to trial or past that. The stress of incarceration, of separation from family, and of a confusing legal process often result in the individual accepting voluntary departure or a deportation order.

CAIR Coalition's clients with past criminal convictions tend to have especially complex cases, which almost always require far-reaching state case law research and appeals to the Board of Immigration Appeals or the Fourth Circuit Court of Appeals. Such cases are nearly impossible to prevail upon without deep expertise in both criminal and immigration law, an area where CAIR Coalition has long-standing expertise. CAIR Coalition also has many clients whose cases require that they establish highly nuanced, individualized country-specific fear-based claims that do not fit straightforwardly into settled asylum law. In order to advance such claims, it is often necessary to compile extensive evidence about conditions in home countries (and to secure expert testimony on those conditions), and/or on such questions as the psychological impact of torture, all of which is impossible for someone who is detained without the assistance of counsel.

New York Immigrant Family Unity Project

The first program of its kind, the New York Immigrant Family Unity Project (NYIFUP) provides legal representation for immigrants facing deportation in New York City. Established in 2014 with funding from the New York City Council, the program provides lawyers for any immigrant who is a New York City resident and earns less than 200 percent of the federal poverty line. NYIFUP is a joint collaboration between the Center for Popular Democracy, the Vera Institute of Justice, the Northern Manhattan Coalition for Immigrant Rights, Make the Road New York, and the Immigration Justice Clinic of Cardozo Law School. Local service providers, including the Legal Aid Society, the Brooklyn Defender Services, and the Bronx Defenders provide high quality legal representation as part of the New York Immigrant Family Unity Project.

The program has proven incredibly effective at improving case outcomes for immigrant clients. Program evaluations by the Vera Institute of Justice found NYIFUP increases immigrants' chances of winning their cases by 1,000 percent.³⁹ In its first full year as a program, NYIFUP served approximately 1,000 immigrant clients, with nearly half of the clients released from detention and nearly two-thirds of the merits hearings won by NYIFUP lawyers.⁴⁰ The immediate and significant impact of the NYIFUP has inspired other cities to pursue legal representation pilot programs. New York's model is being replicated in two locations in upstate New York, and a privately funded model exists in New Jersey. In December of 2016, the city of Los Angeles announced the creation of the LA Justice Fund to create a NYIFUP style access to counsel program to serve LA area immigrants. The city has committed \$2 million, and the county Board of Supervisors voted in January 2017 to commit \$3 million to the fund. The city hopes to supplement this investment with philanthropic contributions. San Francisco has proposed a similar program, to be run in collaboration with the local public defender's office. Policymakers and community groups in several other cities including Philadelphia, PA, Boston, MA, and Austin, TX are also laying groundwork for legal representation programs for immigrants in removal proceedings.

These types of access to counsel programs can be funded through a combination of public and private, and state and local resources. In the case of New York, the City Council partnered with two private foundations, the Robin Hood Foundation and New York Community Trust, in order to fund a representation program for unaccompanied minors.⁴¹

Economic Impacts of Providing Access to Counsel

It's clear that legal representation for individuals in immigration court has an enormous direct impact on their case outcomes, families, and livelihoods. In addition to these direct impacts, providing access to counsel can have many positive secondary impacts on the court system as well as local cities and communities. The American Bar Association, which publicly advocates for guaranteed right to legal counsel, has documented numerous benefits for federal and local governments: "legal representation [...] benefits the government and the administration of justice through improved appearance rates in court, fewer requests for continuances and shorter periods in detention at significant financial savings. It also deters frivolous claims. Above all, increased representation serves the government's interest in seeing that its decisions in these consequential cases turn on U.S. legal standards and the merits of the case, not on a litigant's income."⁴²

Immigrant communities also play a vital role in supporting city and state economies. As workers, small business owners, taxpayers, and consumers, immigrants directly support local development. When more immigrants join a local community, this has been shown to produce higher levels of economic growth and higher income per capita, both for immigrants and U.S.-born individuals.⁴³ Immigrants are 13 percent of the total U.S. population but comprise 16 percent of the labor force and have been shown to play an outsized role in growing the United States' Gross Domestic Product.⁴⁴

These trends can be seen in both Virginia and Maryland where immigrants make significant contributions to the local economy. In the D.C. metropolitan area, the vast majority, or three-fourths, of working age non-citizens are currently in the labor force. According to recent analysis by the Partnership for a New American Economy, a non-partisan collaborative between leading mayors and business leaders, immigrant-owned businesses in Maryland employ approximately 125,900 people and pay \$9 billion annually in federal, state, and local taxes.⁴⁵ Despite the fact that foreign-born individuals are only 11 percent of Virginia's state population, 17.5 percent of its business owners are immigrants who generated over \$3 billion in annual income for Virginia over a five year period.^{46,47} Similar trends play out at the city level. In Baltimore, 21 percent of the city's businesses are owned by immigrants (despite only being 7 percent of the total population) and immigrants account for 9 percent of the city's total economic output.^{48,49}

Immigrants in the D.C. metropolitan area also contribute taxes that boost state and local revenue streams. The Urban Institute found that immigrant households in Maryland contributed \$4 billion, or 18 percent, of all taxes collected in Maryland.⁵⁰ This included federal, Social Security, and Medicare taxes, state income, sales, and auto taxes, as well as local property, income, sales, auto, and utility taxes. Despite claims to the contrary, undocumented households also pay significant state and local taxes. The Institute for Taxation and Economy policy found that undocumented Maryland residents paid "\$293.8 million in state and local taxes in 2012 [including] \$147.3 million in sales taxes, \$68.1 million in personal income taxes, and \$78.4 million in property taxes."⁵¹ A report by the Congressional Budget Office also concluded that "in aggregate and over the long term, immigrants pay more in taxes (federal, state, and local) than they use in government services."⁵²

Immigrant communities are also credited with increasing home values and revitalizing struggling neighborhoods without exacerbating affordable housing crises. In Baltimore, immigrant communities have helped revitalize the city's struggling housing market through both rentals and home purchases. Immigrants own more than 7,500 homes in Baltimore and rent another 11,700.⁵³ Immigration has boosted the average home value by nearly \$3,300 in Baltimore County and \$1,600 in Baltimore City.⁵⁴ Some research has shown that for every 1,000 immigrants that settle in a county, 250 U.S.-born individuals will then move (often drawn by the increased economic opportunity).⁵⁵ For cities like Baltimore, which are seeking to boost population growth, this can be an important boon to local communities.

Given the positive economic impact of immigrant communities, cities and states stand to lose significantly with harsh and overly aggressive immigration enforcement policies. **Estimates have shown that if every undocumented person in Virginia were deported, the state would lose up to \$11.2 billion in economic activity, \$5 billion in Gross State Product (GSP), and approximately 62,000 jobs. Maryland would fare even worse, with losses estimated at \$15.3 billion in economic activity, \$6.8 billion in GSP, and approximately 73,000 jobs lost.**⁵⁶ Some projections estimate that deporting all undocumented immigrants would result in an annual GDP loss of \$11.8 billion or 2.6 percent in Virginia and \$9.6 billion or 2.8 percent in Maryland.⁵⁷

Employers in the D.C. metro area bear the biggest fiscal burden of turnover costs related to detention and deportation. Based on our projections, Virginia state employers pay an estimated \$6 million in turnover-related costs annually as they are forced to replace detained or deported employees. Every year, Maryland employers pay an estimated \$5.9 million in avoidable turnover costs when their employees are detained or deported (See Appendix I).

Most immigrant households have at least one U.S. citizen in the home, usually children. When these U.S. citizen children lose a parent or caregiver through deportation, they often enter foster care and draw on the social safety net. In addition to the devastating human costs of family separation, cities and states often incur costs to public health insurance programs and foster care services when children of immigrants are detained and deported.

Every year, detentions and deportations cost Virginia approximately \$600,700 in child health insurance costs and \$347,100 in foster care costs to care for children for detained or deported. The state of Maryland pays an estimated \$571,100 for child health insurance costs and \$327,800 in foster care costs for children whose parents have been detained or deported (see Appendix I).

Access to counsel programs help decrease and avoid costly disruptions in an individual's jobs, education, and family life. Family unity contributes to social and economic stability. When families thrive, it reduces the long-term costs to both states and cities that provide public services.

Conclusions

Every year, nearly 4,000 D.C. metropolitan immigrant community members, who may have a right to remain in the United States, face detention and deportation because they cannot afford a lawyer. Immigrants facing detention and deportation have no federal right to appointed counsel. This violates the most basic principles of due process and equal treatment under the law. As this report illustrates, individuals without lawyers face significant challenges and rarely receive favorable immigration court outcomes. Harsh immigration enforcement impacts people who are torn apart from their families, small business owners and workers who lose their livelihoods, as well as local employers and city and state governments who incur numerous costs and negative economic impacts stemming from over-enforcement.

Significant strides have been made by cities in New York, New Jersey, and California to establish a guaranteed access to legal representation for people in immigration court proceedings. After New York became the first city in the country to guarantee legal representation for people in immigration court proceedings, immigrants' chances of winning their cases increased by 1,000 percent.⁵⁸ A growing number of cities around the country have passed or are considering similar programs. Providing legal counsel is one of the most straightforward policy solutions to ensure due process and just treatment of immigrants. In addition to ensuring the legal process is fair, access to counsel ensures the process is efficient, with qualified lawyers effectively navigating the courtroom and judges receiving fewer requests for delays in hearings as well as appeals. Legal counsel helps immigrants avoid unnecessary detention which is a costly and inefficient use of taxpayer dollars.⁵⁹ An access to counsel program in Baltimore and Arlington will ensure the D.C. metro area realizes its core values of justice and equal treatment for all residents while more efficiently using taxpayer money and demonstrating local policymakers' commitment to building strong families and communities.

Appendix I—Data Analysis Methodology

This report analyzes Department of Justice Executive Office for Immigration Review data obtained through a Freedom of Information Act Request. We received records for all individuals who appeared before immigration courts in Arlington, Virginia or Baltimore, Maryland in the past five years. We filtered this down to individuals who received a final case or appeal determination between June 1, 2010 and May 31, 2015. The summary statistics in this report only factor in case outcomes for individuals in removal proceedings where a final decision was made during the six-year period. Removal proceedings account for 97 percent of immigration court proceedings and determine whether an individual will be deported.⁶⁰ The final numbers also reflect whether an individual appealed the initial court decision, whether the appeal was successfully granted, and the legal representation status during the appeal process. In order to address changes of location or transfers, an individual was counted in the court totals if their “Base City” in the database was listed as Arlington or Baltimore. This analysis is focused on adults and does not look at court outcomes for youth in juvenile courts who were filtered out of the dataset. Consistent with national trends, some individuals receive legal representation throughout their cases while others often have representation at a single hearing. Given constraints in data collected by the EOIR, we were only able to determine if someone had a lawyer at some point in their case. These individuals were counted as having legal representation in the reported totals.

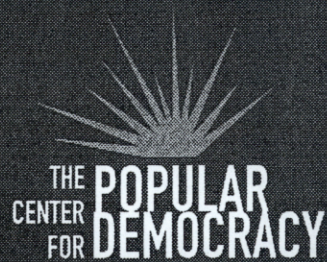
The legal representation rates, by organization, were furnished by the CAIR Coalition which keeps internal statistics about case placement rates for all unrepresented detained clients they encounter in Maryland and Virginia. The annual economic impact of deportation estimates for Virginia and Maryland draw on methodology developed and published in “The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers” (Center for Popular Democracy, Northern Manhattan Coalition for Immigrant Rights, Cardozo Law, and Make the Road New York).

Notes

- 1 Pseudonym used for purposes of protecting confidentiality
- 2 There is only one civil detention center in the DC metropolitan area—the Farmville Detention Center in Virginia. All other facilities where immigrants are detained are local and county jails.
- 3 Bettina Rodriguez Schlegel “New York Immigrant Family Unity Project lays groundwork for constitutional victory” Vera Center for Justice, ThinkJustice Blog, December 28, 2015, <https://www.vera.org/blog/new-york-immigrant-family-unity-project-lays-groundwork-for-constitutional-victory>
- 4 Ingrid Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” 164 Penn. L. Rev. 1 (2015), http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review, 2.
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- 6 David Hausman and Jayashri Srikantiah, “Time, Due Process, and Representation: An Empirical and Legal Analysis of Continuances in Immigration Court,” 84 Fordham L. Rev. 1823 (2016), <http://ir.lawnet.fordham.edu/flr/vol84/iss5/2>
- 7 Supreme Court Decision PADILLA v. KENTUCKY, No. 08–651. Argued October 13, 2009—Decided March 31, 2010 <https://www.supremecourt.gov/opinions/09pdf/08-651.pdf>
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- 10 “Fundamental Fairness: A Report on the Due Process Crisis in New York City Immigration Courts” National Lawyers Guild Immigration Court Observation Project, 8.
- 11 Audrey Singer “Metropolitan Washington: A New Immigrant Gateway” Research in Race and Ethnic Relations, Volume 17, ‘Hispanic Migration and Urban Development: Studies from Washington DC’, <https://www.brookings.edu/wp-content/uploads/2016/06/washington-dc-immigration-singer.pdf>, 3.
- 12 Audrey Singer “Metropolitan Washington: A New Immigrant Gateway” 1.
- 13 U.S. Census Bureau (2014). American Community Survey 5-year estimates. The Census definition of “foreign-born” includes lawful permanent residents, temporary immigrants, refugees, asylum seekers, and to a lesser extent undocumented immigrants who are captured by the Census.
- 14 Audrey Singer “Metropolitan Washington: A New Immigrant Gateway” 14-15.
- 15 Audrey Singer “Metropolitan Washington: A New Immigrant Gateway” 16.
- 16 “Fundamental Fairness: A Report on the Due Process Crisis in New York City Immigration Courts” National Lawyers Guild Immigration Court Observation Project, 14.
- 17 “The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers” Center for Popular Democracy, Northern Manhattan Coalition for Immigrant Rights, & Cardozo Law, 2013, https://populardemocracy.org/sites/default/files/immigrant_family_unity.pdf, 1.
- 18 Immigration and Nationality Act § 292, 8 U.S.C. § 1362: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9617.html>
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- 30 U.S. Department of Justice Executive Office for Immigration Review, "FY 2015 Statistics Yearbook," F-1.
- 31 "Ensuring Fairness and Due Process In Immigration Proceedings" American Bar Association, 3.
- 32 U.S. Department of Justice Executive Office for Immigration Review, "FY 2015 Statistics Yearbook," F-1.
- 33 U.S. Department of Justice Executive Office for Immigration Review, "FY 2015 Statistics Yearbook," F-1.
- 34 Ingrid Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," 164 Penn. L. Rev. 1 (2015), 41.
- 35 There is only one civil detention center in the DC metropolitan area—the Farmville Detention Center in Virginia
- 36 Many individuals are only able to afford a lawyer for their bond hearing but remain unrepresented for the remainder of their case.
- 37 Georgetown Center for Applied Legal Studies; American University Human Rights Clinic; American University Immigrants' Rights Clinic; UDC Human Rights Clinic; George Washington Immigration Clinic; University of Maryland—Immigration Clinic; University of Baltimore—Immigration Clinic; Washington & Lee—Immigration Rights Clinic; University of Virginia—Immigration Law Clinic; Catholic University School of Law - Immigration Clinic.
- 39 Bettina Rodriguez Schlegel "New York Immigrant Family Unity Project lays groundwork for constitutional victory" Vera Center for Justice, ThinkJustice Blog, December 28, 2015, <https://www.vera.org/blog/new-york-immigrant-family-unity-project-lays-groundwork-for-constitutional-victory>
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- 60 Ingrid Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," 164 Penn. L. Rev. 1 (2015), 12.



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