

The New York Immigrant Family Unity Project (NYIFUP)

***Improving Access to Justice in
Deportation Proceedings***



**BROOKLYN
DEFENDER
SERVICES**

Background

- The 6th amendment of the U.S. Constitution gives every person charged with a crime the right to an attorney.
- People who are unable to afford an attorney are provided one free of charge.
- Historically, those involved in civil and administrative proceedings, including deportation proceedings, have not been afforded the same right.
- A 2011 report by the Study Group on Immigrant Representation convened by Judge Katzmann found that 60 percent of New York's detained immigrants did not have legal representation.
- The effect is striking: 95% of detained *unrepresented* immigrants do not make a claim that would entitle them to stay in the country and 97% of detained *unrepresented* immigrants lose their cases.
- Often, the consequences of a criminal proceeding are far less severe than those of an immigration proceeding, and yet there is no right to counsel in the latter.

Urgency of Action

- Action by the federal government to reform our immigration system is uncertain.
- Meanwhile, according to a new report from the U.S. Conference of Catholic Bishops & the Center for Migration Studies, the immigrant detention system has grown from housing 85,000 detainees in 1995 to more than 440,000 in 2013.

The Opinion Pages | EDITORIAL

End Immigration Detention

By THE EDITORIAL BOARD MAY 15, 2015



The South Texas Family Detention Facility in Dilley, Tex. Jennifer Whitney for The New York Times

The Travesty of Immigrant Detention

“Detention is intended to help enforce the law, but, in practice, the system breeds cruelty and harm, and squanders taxpayer money. It denies its victims due process of law, punishing them far beyond the scale of any offense. It shatters families and traumatizes children. As a system of mass incarceration — particularly of women and children fleeing persecution in Central America — it is immoral.”

- NY Times editorial, ‘End Immigration Detention’ May 15, 2015

NYIFUP's Successful Launch

- In 2013, the NYC Council launched the New York Immigrant Family Unit Project (NYIFUP) with pilot funding of \$500,000 to provide representation for 190 of the approximately 900 indigent detained and otherwise unrepresented immigrants who faced deportation in the New York City Immigration Court that year.
- Brooklyn Defender Services was one of two legal service providers originally selected to provide representation.
- Based on the strengths of the pilot's results, in FY 2015, the Council committed \$4.9 million to fund NYIFUP's service of *all* New Yorkers facing detained deportation proceedings, including those facing proceedings while detained in nearby New Jersey.
- **As a result of the Council's visionary leadership, today the City can say that no NYC family will have a loved one locked up and deported simply because they cannot afford an attorney.**

Coalition Partners

- NYIFUP's providers—BDS, LAS, and BXD—have been working with the Northern Manhattan Coalition for Immigrant Rights, The Center for Popular Democracy, Make the Road New York, the Vera Institute of Justice, the Immigration Justice Clinic at Cardozo Law School, and scores of other immigrant, legal services, and progressive organizations.

NYIFUP's Goals

- 1) Obtain successful case outcomes for detained New Yorkers who have a right to remain in the United States.
- 2) Ensure that all detained New Yorkers facing deportation are empowered to make informed decisions about their cases and receive due process of law.
- 3) Keep New York families intact and our immigrant communities strong and contributing to the vibrancy of our City.
- 4) Create efficiencies in the process by reducing the number of clients who have to fight their cases while detained and by expediting the resolution of cases for those who cannot be released from custody.

Results

- It is too early to assess the results of full representation since the program only came to scale in July; many cases take months and, frequently, years to resolve.
- As of February 28, 2015, the NYIFUP *pilot* program has **resulted in 42 percent of its 190 clients being released from detention and reunified with their families.**
- NYIFUP has won 69% (20 of 29) of its merits hearings (trials).
- NYIFUP has initiated 28 ancillary proceedings—proceedings in other courts or USCIS that are critical to obtaining a successful outcome or release from detention in the deportation proceedings.
- NYIFUP has obtained 22 voluntary departures.

Results, con't.

- **We project that NYIFUP will increase the percentage of immigrants who will win the right to remain in the United States 1000% as compared to the 3% success rate for detained *unrepresented* immigrants documented by the New York Immigrant Representation Study.**

Efficiency and Due Process

As the Times editorial notes, “the detention system has become an enormous funnel for the crushingly overburdened, underfunded immigration courts, which receive a meager \$300 million from Congress each year, one-sixtieth of what ICE and Customs and Border Protection get. By the end of March, nearly 442,000 cases were pending before immigration judges, with an average case waiting 599 days to be heard, and delays in some courts of more than two years. This is not efficiency or due process.”

Efficiencies and Due Process, con't.

- While NYIFUP maximizes the number of families that can be kept together, some immigrants facing deportation have no viable claim under existing law.
- When there is no possibility of release or staying in the country, it often is in the best interests of individuals facing deportation not to unnecessarily extend their time in detention.
- 34% of NYIFUP's clients chose to resolve their cases by accepting an order of removal or voluntary departure at their first appearance in immigration court. Another 9% did so at the second hearing.

Creating Positive Systemic Changes

NYIFUP providers and Immigration Judges agree that our constant presence and advocacy has improved the overall culture and practice of detained removal proceedings at Varick Street Immigration Court, including by:

- ✓ Holding the government to its burden of proof
- ✓ Questioning its positions when they are unfounded
- ✓ Challenging removability, or establishing eligibility for relief with sophisticated legal arguments
- ✓ Mounting bond and merits hearings with well-documented evidence packages
- ✓ Thoroughly preparing testimony from clients, families, and experts
- ✓ Ensuring our clients are routinely given copies of important documents and, if needed, simultaneous interpretation in the courtroom

Client Stories: Michael

Michael is a 51-year-old Lawful Permanent Resident from Jamaica who came to the US in 1983, when he was 20 years old. He enlisted in the Coast Guard, but was discharged for an injury, and then continued his college studies in engineering.



For the past 20 years, Michael has been actively displaying signs of untreated schizophrenia. He was homeless on and off for 15 years. Recognizing at their first meeting that Michael was likely struggling with undiagnosed severe mental health problems, his immigration attorney brought in an in-house social worker to work with him and schedule a psychiatric evaluation. The psychiatrist diagnosed him as schizophrenic and concluded that he was incompetent and unable to assist counsel in his own defense.



The NYIFUP attorney submitted a motion to terminate proceedings due to his lack of competence. After tireless and zealous advocacy by the attorney, in October 2014, the judge administratively closed Michael's removal proceedings on competency grounds. Although the government initially reserved appeal, the Deportation Officer granted a Humanitarian Parole request that day. After ten months of detention, Michael was released and reunited with his sister, with whom he is now living while he is readjusting to life outside of detention. Ultimately, the government agreed not to appeal and Michael now has the ability to move on with his life with the help of his concerned family.

Client Stories: Jenny

Jenny is a young woman in her twenties who has been living in New York since she was six years old, when she came to this country from Trinidad and Tobago. She had been detained by ICE and placed in removal proceedings because she lacked lawful status here, but also because of an arrest history that included mostly petty crimes.



When NYIFUP attorneys from Brooklyn Defender Services met Jenny, she expressed her fear of returning to Trinidad. She self-identifies as lesbian, and was terrified of the prospect of being returned to a country where she would face stigma and persecution, possibly even death, as a result. NYIFUP attorneys—with co-counsel at Immigration Equality—represented Jenny in a complex case seeking asylum, withholding, and Convention Against Torture relief, which included technical legal briefing and psychiatric evidence.



On the strength of the evidence and her attorneys' advocacy, the government's attorney agreed to stipulate to almost all of the issues in the case. In May 2014 the Immigration Judge granted Jenny all three forms of relief: asylum, withholding and CAT. He said in his 25 years as a sitting judge, he has only ever granted asylum without trial in one other case. Jenny's lawyers secured her release from detention on that same day, bought her lunch, and took her to be reunited with her mother. NYIFUP staff have also been working with Jenny post-relief; they helped her place in a GED program and access other services, and earlier this year Jenny was accepted into college.

Evaluating NYIFUP

- Using matched comparison groups of both unrepresented and represented immigrants facing deportation, the Vera Institute of Justice, in conjunction with the Immigration Justice Clinic of Cardozo Law School, will determine whether NYIFUP representation results in more successful outcomes and more efficient case processing, with a focus on three outcomes:
 - Demonstrating the value of the program to the City, supporting the case for long-term funding of the project.
 - Proving to other jurisdictions around the country that funding of deportation defense benefits local and state jurisdictions and their immigrant communities.
 - Quantifying the offsetting savings—principally in lower detention costs—to the federal government that result from public defender representation in deportation to support the case for federal funding.



A Model for Reform

New York's leadership in funding this groundbreaking program has **already** prompted cities such as Boston, Chicago, San Francisco, and Los Angeles to mount replication efforts and a dozen or more additional cities to make inquiries regarding replicating the NYIFUP model.





Quick resolution of cases, when appropriate, as well as more frequent and quicker releases of individuals with viable claims reduce the considerable expense to the federal government of detention, and demonstrate why it would be in the best interest of the federal government to fund representation for detained immigrants across the nation.