

The Executive Office for Immigration Review reports that over 30 percent of individuals in pending immigration proceedings were without legal representation in 2018.¹ This figure drops to 14 percent for individuals in detention (Transactional Records Access Clearinghouse^a, 2014). When immigrants have legal representation, they are more likely to be released from detention and seek and obtain relief (Transactional Records Access Clearinghouse^a, 2014). When children have legal representation in immigration court, 73 percent remain in the U.S., compared to 15 percent who have no legal representation (Transactional Records Access Clearinghouse^b, 2014 & 2017). Immigrants have better outcomes at every stage in the immigration court process when they have legal representation (Eagly, Shafer, & Whalley, 2018; Eagly & Shafer, 2021).

Page 1 of this research brief provides some research highlights; page 2 a narrative overview; page 3 other helpful resources; and pages 4-10 summaries of the curated studies. All endnotes are to sources not included in our summaries section.

RESEARCH HIGHLIGHTS:

- “96% of nondetained immigrants represented by a lawyer attended all of their hearings from 2008 to 2018.” (Eagly & Shafer, 2021).
- “Having a lawyer is associated with better outcomes at every stage in the immigration court process” (Eagly, Shafer, & Whalley, 2018).
- “Many UAC [unaccompanied children] have legitimate claims that would lead to legal status if they could navigate the country’s complex web of immigration laws—approximately 40 percent are potentially eligible for some kind of relief from deportation” (Chen & Gill, 2015).
- “With respect to the efficacy of representation, we find that immigrants who are represented by counsel do fare better at every stage of the court process—that is, their cases are more likely to be terminated, they are more likely to seek relief, and they are more likely to obtain the relief they seek” (Eagly & Shafer, 2015).
- “Where the child appeared alone without representation, only 15 percent were allowed to remain in the country. All the rest were ordered deported — 80 percent through the entry of a removal order, and 5 percent with a VD order” (Transactional Records Access Clearinghouse^a, 2014).
- “While many immigration lawyers and law clinics attempt to provide legal assistance on a pro bono basis, their numbers are insufficient to meet the need. One result of this is that children were not represented about half of the time (48%) they appeared in Immigration Court, although there is wide variation by state and hearing location. Less than a third (31%) have thus far been able to secure an attorney in currently pending cases” (Transactional Records Access Clearinghouse^b, 2014).
- “Having counsel positively correlates with the filing of relief applications. By extension, the data suggests that being in detention and being transferred to remote detention facilities, which make it more difficult to access counsel, negatively impact an individual's likelihood of applying for relief” (New York Immigrant Representation Study, 2011).

NARRATIVE OVERVIEW RE: IMPROVING IMMIGRATION OUTCOMES

Migrating to the United States is a complex process, and the immigration system is comprised of a myriad of individuals representing different backgrounds, origins, and socioeconomic and legal statuses. In 2019, there 44.9 million immigrants in the United States, about 13.7 percent of the total population.² About 34 million immigrants lawfully reside in the US, most of whom are lawful permanent residents or have temporary visas.³ An additional one million immigrants have temporary permission through the Deferred Action for Childhood Arrivals and Temporary Protected Status programs to live in the U.S. In FY 2021, the annual ceiling for refugee submissions was set to 15,000, down from 30,000 in 2019 and the lowest since the resettlement program was established in 1980. In 2020, there were about 11,800 refugees resettled in the United States.⁴ There are an estimated 11 million undocumented immigrants living the United States.⁵ From FY 2016 to FY 2018, ICE administrative arrests for civil violations of US immigration law increased by 44 percent from 110,104 to 158,581.⁶ Reports of immigrant removals and returns from FY 2019 demonstrated an increase from the previous year: Between FY 2018 and FY 2019, removals and returns carried out by Customs and Border Patrol (CBP) increased by 39 percent and ICE's increased by 4 percent.⁷

As of February 2021, the immigration court backlog exceeded 1.26 million cases, a 70 percent increase in pending cases since 2018.⁸ Immigrants in removal proceedings have a right to counsel at no expense to the government. A 2016 study out of the American Immigration Council reported that only 37 percent of individuals in pending immigration proceedings had legal representation.⁹ The same study concluded that immigrants in detention are less likely to receive legal representation than those who were never detained. Only 14 percent of detained immigrants had legal representation, compared to two-thirds of nondetained immigrants.

DATA AND STUDIES SHOW LEGAL AID HELPS:

When immigrants have legal representation, they are more likely to be released from detention and seek and obtain relief (Eagly & Shafer, 2015). One study found that receiving relief or termination of a case is most dependent on having legal representation and not having been detained. Those who were never detained and had legal representation had successful outcomes 74 percent of the time, compared to just three percent of those who had no legal representation and who were detained (New York Immigration Representation Study, 2011, p. 3). We see a similar trend among unaccompanied children, who often do not speak English and lack the financial resources to attain adequate representation in court. In FY 2015, about 30 percent of unaccompanied children were without representation. Later studies found that the lack of representation among unaccompanied children rose significantly through 2017: In FY 2016, rates of unrepresentation for unaccompanied children reached 40 percent and, in 2017 they jumped to three-fourths (73 percent) of cases. In 73 percent of the cases when the child received legal representation, the court allowed the child to remain in the United States. When the child didn't have legal representation, only 15 percent were allowed to remain (Transactional Records Access Clearinghouse^b, 2014).

Better outcomes may be related to the ability of attorneys to help immigrants navigate the complex system. As one study writes, "It is commonly said that U.S. immigration law rivals the U.S. tax code in its complexity" (Chen & Gill, 2015, p. 119).

Detained families experience significant barriers to seeking asylum, particularly when they are detained in remote locations and experience language barriers and are subject to over-detention (Eagly, Shafer, & Whalley, 2018). Immigration judges have been found to reverse half of the negative credible fear decisions and lower the bond amount set by detention officers (Eagly, Shafer, & Whalley, 2018). But 14

percent of individuals in detention receive legal representation (Eagly & Shafer, 2015). Regardless, immigrants, and particularly asylum seekers, are likely to attend court dates. An analysis of asylum adjudication in family detention found that family members seeking asylum attended their immigration court hearings 96 percent of the time (Eagly, Shafer, & Whalley, 2018).

The legal needs of immigrants are not just related to immigration status: “Poor immigrants not only suffer from the same range of potentially devastating legal problems as citizens—eviction, fraud, discrimination, and domestic abuse—but also face a uniquely draconian penalty reserved for them alone: deportation.”¹⁰ A survey of family court judges found that 93 percent of judges and 95 percent of attorneys who practice family law handled a case in which immigration status was an issue (Liebmann & Wren, 2012).

HELPFUL RESOURCES:

- The Transactional Records Access Clearinghouse at Syracuse University has an [expansive list of reports](#) and data on immigration.¹¹
- [The Migration Policy Institute](#) provides a host of reports and briefs on immigration policies and trends on its website. MPI also maintains an updated list of [Frequently Requested Immigration Statistics](#).
- In January 2021, the [American Immigration Council](#) and American Immigration Lawyers Association published a [policy brief](#) on the need to guarantee legal representation for people facing removal.
- The Department of Homeland Security has a [page of data and statistics on immigration](#).¹²
- Legal Services Corporation has collected client success stories [here](#).¹³
- For more information about civil legal aid messaging, communications, and story-telling, go to the [Voices for Civil Justice](#) and [All Rise for Civil Justice](#) websites.¹⁴
- For a more comprehensive repository of legal aid related research, go to the National Legal Aid & Defender Association's [LegalAidResearch](#) website.¹⁵

Endnotes

¹ U.S. Department of Justice, Executive Office for Immigration Review, *Adjudication Statistics* (February 25, 2019), available at <https://www.justice.gov/eoir/page/file/1062991/download>

² Batalova, et. Al. *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (February 11, 2021), available at <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020#unauthorized>

³ Jens Manuel Krogstad and Ana Gonzalez-Barrera, *Key Facts about the U.S. Immigration Policies and Proposed Changes*, Pew Research Center (February 26, 2018), available at <http://www.pewresearch.org/fact-tank/2018/02/26/key-facts-about-u-s-immigration-policies-and-proposed-changes/>

⁴ Supra, note 4

⁵ Id.

⁶ ICE ERO. Fiscal Year 2018 ICE Enforcement and Removal Operations Report. (2018) <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>

⁷ Supra, note 4

⁸ TRAC Immigration, *Immigration Court Backlog Tool* (February 2021), available at https://trac.syr.edu/phptools/immigration/court_backlog/

⁹ Eagley & Shafer, *Access to Counsel in Immigration Court* (September 2016), American Immigration Council. available at <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>

¹⁰ Goeffrey Heeren, *Illegal Aid: Legal Assistance to Immigrants in the United States*, 33 Cardozo L. Rev. 619 (2011) at 620.

¹¹ https://trac.syr.edu/phptools/reports/reports.php?layer=immigration&report_type=report

¹² <https://www.dhs.gov/immigration-statistics>

¹³ <https://www.lsc.gov/what-legal-aid/client-success-stories>

¹⁴ See <https://voicesforciviljustice.org/> and <https://www.allriseforciviljustice.org/>

¹⁵ <https://legalaidresearch.org/>



SUMMARIES OF KEY STUDIES

1. Ingrid Eagly & Steven Shafer, *Measuring In Absentia Removal in Immigration Court*, 168 U. Pa. L. Rev. 817 (2020).

Available at: https://scholarship.law.upenn.edu/penn_law_review/vol168/iss4/1

See also: <https://www.americanimmigrationcouncil.org/research/measuring-absentia-removal-immigration-court>

With this study, the authors aimed to answer a question at the core of debates about the immigration court system: Do immigrants attend their immigration court hearings? Claims that most immigrants fail to appear in immigration court continue to prevail in government settings. However, an analysis of Executive Office for Immigration Review (EOIR) court data revealed that this common claim is largely misled. In fact, the analysis demonstrated that, between FY 2008 and 2018, “83% of all nondetained immigrants with completed or pending removal cases...attended all of their court hearings” (p. 4). The study methodology also revealed that current EOIR methodologies for measuring court attendance do not capture the reality of immigration court appearances across various types of cases.

Methodology: The researchers analyzed EOIR court data obtained through FOIA. They used a sample of 2,797,437 nondetained removal proceedings from fiscal years 2008-2018. The proceedings included individuals who were never detained, as well as those that had been released from detention. In their calculation of *in absentia* cases, unlike EOIR’s methodology, the authors included pending cases, which make up a large number of cases in the immigration court system. They used this data to tabulate case trends and outcomes at the hearing level. Read more detailed summary of the methodology [here](#).

“...[A]ttorneys play a vital supporting role in ensuring that their clients make it to court. Attorneys can make sure their client knows when and where to appear and how to keep the court updated on any change of address... Unrepresented litigants may also encounter challenges in completing the necessary court documents to reschedule an immigration court hearing or to notify the court about a change of address”
(American Immigration Council brief, p. 14)

Highlights:

- “96% of nondetained immigrants represented by a lawyer attended all of their hearings from 2008 to 2018.” (p. 4)
- “83% of nondetained immigrants with completed or pending removal cases attended all their hearings from 2008 to 2018.” (p. 4)
- “Appearance rates varied strongly based on the immigration court’s location.” (p. 4)
- “Given the immense and growing backlog in the immigration courts, cases can drag on for many years before a decision is reached. During this time, immigrants who diligently are attending all of their court hearings should not be excluded from calculations of appearance rates.” (p. 9)
- “From 2008 to 2018, nearly 20% of all in absentia removal orders were challenged through a motion to reopen. These motions were overwhelmingly successful, and fully 15% of those who were ordered removed in absentia during that period successfully reopened their cases and had their deportation orders rescinded.” (p. 12)
- “...persons with counsel were ordered removed in absentia just 8% of them time. When using the all matters method, those with counsel were ordered removed in absentia in just 4% of cases...We also find that most cases with failures to appear involved unrepresented litigants. Overall, only 15% of those who were ordered removed in absentia during our study period had an attorney. By contrast, 86% of those with an initial completion not ending in absentia had counsel.” (p. 14)
- “We also find that the ability to reopen an in absentia removal case is mainly reserved for those who find a lawyer. That is, among those who were able to successfully reopen their case after an in absentia removal order, 84% had a lawyer representing them.” (p. 14)

2. Ingrid Eagly, Steven Shafer, & Jana Whalley, *Detaining Families: A Study of Asylum Adjudication in Family Detention*, 106 Cal. L. Rev. 785 (2018), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/detaining_families_a_study_of_asylum_adjudication_in_family_detention_final.pdf

The authors analyzed all immigration court cases initiated between 2001 and 2016 from five detention centers to conduct an analysis of asylum adjudication in family detention. They found that immigration judges reversed approximately half of the negative credible fear decisions and lowered the bond amount set by detention officers. They further found that families experience significant barriers to seeking asylum, particularly that they are detained in remote locations and experience language barriers, experience over detention. They found that there are three main barriers to access to justice: the location of the detention center, representation by counsel, and language. All five of the detention centers were located in small or rural cities and almost all the attorneys who worked on these cases were based out of different cities than where these cases took place.

Methodology:

They analyzed government data on immigration court proceedings, which they obtained under the Freedom of Information Act. This report uses government data from over 18,000 immigration court proceedings from 2001 to 2016 obtained from the Transactional Records Access Clearinghouse. It studied five family detention centers: Berks Family Residential Facility, T. Don Hutto Residential Center, Artesia Family Residential Center, Karnes County Residential Center, and South Texas Family Residential Center. Eagly is a professor of Law at UCLA. Shafer is a research associate at UCLA School of Law. Whalley is the University of California Presidential Fellow.

Highlights:

- "The evidence we uncover documents the important, and underappreciated, role that immigration courts have played in limiting the over-detention of migrant families by immigration authorities at the border. During the period studied, immigration judges reversed half of the negative credible fear decisions of asylum officers and systematically lowered the bond amount set by detention officers" (p. 786).
- "Family members seeking asylum attended their immigration court hearings in 96% of cases since 2001" (p. 786).
- "Having a lawyer is associated with better outcomes at every stage in the immigration court process" (p. 815).
- "Families who were released were far more likely to find counsel: 76% were represented, a rate almost identical to the 77% representation rate for non-family released respondents. ... Even though representation in family cases is comparatively higher than in non-family cases, almost half of families in detention and one-quarter of families that were released never obtained a lawyer.¹⁷⁷ In addition, barriers to obtaining lawyers were particularly profound in the initial stage of family detained proceedings, where only 32% of detained family members found counsel" (p. 821).
- Non-English speakers also face barriers in pursuing their asylum claims in immigration court. Under the law, asylum officers are required to arrange for an interpreter if the officer is not competent in the interviewee's language. However, advocacy groups have documented DHS's systemic failure to use interpreters. If a case reaches an immigration judge, interpreters are required. Court observers have reported that interpreters at times interpret incorrectly, summarize or paraphrase respondents' testimony, and offer inappropriate commentary on their statements. The use of telephonic or video interpreters exacerbates these difficulties, due to connectivity issues and other challenges associated with remote interpreting" (p. 822-823).
- "Overall, 49% of released family members with counsel were successful, as were 37% of represented detained family members. In comparison, for those without counsel, only 7% of

released family members and 8% of detained family members had success [in terms of avoiding removal]" (p. 846).

3. Annie Chen & Jennifer Gill, *Unaccompanied Children and the U.S. Immigration System: Challenges and Reforms*, 68 J. of Int. Aff. 115 (2015), available at <https://jia.sipa.columbia.edu/unaccompanied-children-and-the-u-s-immigration-system-challenges-and-reforms>

Chen and Gill, two researchers at the Vera Institute of Justice's Center on Immigration and Justice, present an overview of the challenges unaccompanied children face upon immigrating to the U.S. Most challenges stem from the lack of guaranteed legal representation at immigration court, where children defend themselves against a government attorney. They also chart how the federal government took steps to increase access to legal services for unaccompanied children. They also provide other policy recommendations, such as a more child-friendly immigration system and additional forms of legal protection for children who are fleeing violence.

Methodology:

Chen and Gill take stock of the current legal protections unaccompanied children are entitled to and make policy recommendations to improve immigration court for children.

Highlights:

- "Many UAC [unaccompanied children] have legitimate claims that would lead to legal status if they could navigate the country's complex web of immigration laws—approximately 40 percent are potentially eligible for some kind of relief from deportation" (p. 115).
- "From the time of apprehension, UAC are put into 'removal proceedings' in immigration court—an adversarial process in which a government attorney argues before an immigration judge that the child should be deported. Though the child has the right to be represented by counsel, the government does not appoint counsel for children, and therefore, many children are forced to represent themselves in immigration court" (p. 118).
- "It is commonly said that U.S. immigration law rivals the U.S. tax code in its complexity" (p. 119).
- "In response to the influx of UAC into the United States, the federal government recently took limited steps to increase access to legal services for this population. In September 2014, the DOJ announced an award of \$1.8 million in grants to help certain legal aid organizations expand their representation of released UAC" (p. 120).

4. Ingrid Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1 (2015), available at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review

They find that nationally, only 37 percent of all immigrants had legal representation in removal cases. This figure dropped to 14 percent for immigrants in detention. Almost two-thirds of non-detained immigrants obtained legal representation. Immigrants located in smaller cities (only 11 percent) were less likely to obtain legal representation than larger cities (47 percent). Representation also varied across national origin: Mexican immigrants had a detention rate of 78 percent and representation rate of 21 percent; Chinese immigrants had a detention rate of 4 percent and representation rate of 92 percent. Of them, only 2 percent of immigrants obtained counsel from pro bono organizations. When immigrants had representation, they were more likely to be released from detention, seek relief, and obtain relief. They find that when immigrants had representation, they were 15 times more likely to seek relief and 5.5 times more likely to obtain relief. This study was funded by the Hellman Fellows Program.

Methodology:

The researchers obtained data from the Executive Office for Immigration Review. They analyzed approximately 1.2 million individual removal cases where judges reached a decision between 2007 and 2012.

Highlights:

- “By looking at individual removal cases decided on the merits, we find that only 37% of immigrants had counsel during our study period from 2007 to 2012” (p. 7).
- “Moreover, we find that only 2% of immigrants facing removal secured pro bono representation from large law firms, nonprofits, or law school clinics. The lion’s share of immigrant representation—90% during the six-year study period—was provided by solo or small firm practitioners” (p. 8).
- “Discussions of attorney representation often assume that representation is necessarily complete, but we find that only 45% of immigrants we count as “represented” had an attorney appear at all of their court hearings” (p. 8).
- “With respect to the efficacy of representation, we find that immigrants who are represented by counsel do fare better at every stage of the court process—that is, their cases are more likely to be terminated, they are more likely to seek relief, and they are more likely to obtain the relief they seek” (p. 9).
- “On average, attorneys were recorded as present in court for 70% of the court hearings of their represented clients. For 11% of the cases we counted as represented, no attorney was recorded as ever appearing in court” (p. 20).
- “Only 17% of the immigrants who were removed without filing any application for relief did so with the advice of counsel. Of those seeking relief, 86% were represented by counsel, revealing just how rare it is to represent oneself in a relief application. An impressive 95% of immigrants who were granted relief between 2007 and 2012 were represented by counsel. Relief applicants who obtained voluntary departure also had high levels of representation (88%)” (p. 24).
- “Across the six-year period studied, only 14% of detained respondents were represented, whereas 66% of the nondetained were represented” (p. 32).
- “Not only were detained respondents less likely than nondetained respondents to obtain additional time to seek counsel, they were also less likely to find counsel when given time to do so. Overall, only 36% of detained respondents seeking counsel actually found counsel, versus 71% of respondents who were never detained and 65% of respondents who were released” (p. 34).

5. Transactional Records Access Clearinghouse^a (TRAC), *Representation for Children in Immigration Court*, Syracuse University (November 25, 2014), available at <https://trac.syr.edu/immigration/reports/371/>

“...there is still a large unmet need for more attorneys despite widespread efforts to provide representation for these children.”

See also: [Children: Amid a Growing Court Backlog Many Still Unrepresented \(syr.edu\)](#) (2017)

The Transactional Records Access Clearinghouse (TRAC) is a data research and distribution organization at Syracuse University. In this report, TRAC analyzed cases from FY 2012 to FY 2014 to compare the outcomes of children who had and did not have an attorney. They found that when a child had an attorney, the child was allowed to remain in the US in 73 percent of cases, compared to 15 percent of children without an attorney.

Methodology:

TRAC analyzed the cases in immigration court between FY 2012 and FY 2014 since there was an increase in the number of cases involving children from Central America.

Highlights:

- Between FY 2012 and FY 2014, there were 43,030 children who had no attorney and 20,691 children who had an attorney in cases involving unaccompanied children (Figure 1).
- "In almost three out of four (73%) of the cases in which the child was represented, the court allowed the child to remain in the United States. The child was ordered removed in slightly more than one in ten (12%) of these cases. And in the remaining 15 percent the judge entered a "voluntary departure" (VD) order" (n.p.).
- "Where the child appeared alone without representation, only 15 percent were allowed to remain in the country. All the rest were ordered deported — 80 percent through the entry of a removal order, and 5 percent with a VD order" (n.p.).
- New data demonstrates these numbers continued to rise through 2017:
 - "nearly three out of ten children whose cases began during FY 2015 were unrepresented. (A total of 19,202 of these cases have already been decided, while 12,126 are still pending.) The figure rises to four out of every ten for cases that began during FY 2016, and jumps to three out of four for cases that originated during FY 2017."

6. Transactional Records Access Clearinghouse^b (TRAC), *New Data on Unaccompanied Children in Immigration Court*, Syracuse University (July 15, 2014), available at <https://trac.syr.edu/immigration/reports/359/> See also: <https://trac.syr.edu/immigration/reports/482/>

The Transactional Records Access Clearinghouse (TRAC) is a data research and distribution organization at Syracuse University. In this report, TRAC analyzed juvenile cases filed in immigration courts from FY 2005 to FY 2014. They found that children were unrepresented 48 percent of the time. Only 31 percent have been able to secure an attorney in pending cases. They find that when the child is represented by an attorney, 47 percent of the time they are allowed to remain in the U.S. When the child did not have an attorney, 90 percent were reported and only 10 percent were allowed to stay in the U.S.

Methodology:

TRAC analyzed the cases in immigration court between FY 2005 and FY 2014. They performed a case-by-case analysis on Immigration Court records on DHS removal orders concerning unaccompanied children. There were over 100,000 cases.

Highlights:

- "While many immigration lawyers and law clinics attempt to provide legal assistance on a pro bono basis, their numbers are insufficient to meet the need. One result of this is that children were not represented about half of the time (48%) they appeared in Immigration Court, although there is wide variation by state and hearing location. Less than a third (31%) have thus far been able to secure an attorney in currently pending cases" (n.p.).
- "The data show that in a large number of cases, Immigration Judges decline to order these children's removal. Many are found to have legitimate legal grounds to remain in this country. The data also show that outcomes in these cases are all too often determined by whether an attorney was present to assist the child in presenting his or her case" (n.p.).
- "In almost half (47%) of the cases in which the child was represented, the court allowed the child to remain in the United States. The child was ordered removed in slightly more than one in four (28%) of these cases. And in the remaining quarter (26%) the judge entered a "voluntary departure" (VD) order. (While with a VD order the child is required to leave the country, the child avoids many of the more severe legal consequences of a removal order" (n.p.).

- "Where the child appeared alone without representation, nine out of ten children were ordered deported — 77 percent through the entry of a removal order, and 13 percent with a VD order. One in ten (10%) were allowed to remain in the country" (n.p.).

7. Theo Liebmann & Lauris Wren, *Special Issue Introduction: Immigrants and the Family Court*, 40 Fam. Court Rev. 570 (2012), available at https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1823&context=faculty_scholarship

Leibmann and Wren are professors of clinical law at Hofstra University. They conducted two surveys—one was of family court judges throughout the US and one of attorneys practicing in family courts. They find that 93 percent of the judges and 95 percent of attorneys had handled a case in which immigration status was an issue, particularly in the context of custody and visitation or allocation of support. Seventy-two percent of the judges surveyed "believed that their level of knowledge regarding immigration law was insufficient to resolve issues arising out of a party's immigration status" (p. 570). The attorneys agreed: only 14 percent of attorneys believed that the judges were knowledgeable about immigration law.

Methodology:

The National Council of Juvenile and Family Court Judges distributed the survey to judges. The attorney survey was distributed to a list of New York and national family court attorneys compiled by Hofstra's Center for Children, Families, and the Law.

Highlights:

- "Ninety-three percent of the judges had handled a case in which the immigration status of a party was raised as an issue. Immigration status became an issue most frequently in the context of custody and visitation, although also in division of property/allocation of support, guardianship, adoption, termination of parental rights, abuse/neglect, juvenile delinquency, child support, orders of protection, domestic violence, and criminal contexts" (p. 570).
- "A stunning seventy-two percent of family court judges surveyed believed that their level of knowledge regarding immigration law was insufficient to resolve issues arising out of a party's immigration status" (p. 570).
- "Ninety-five percent of the attorneys had handled cases in which their client or the other party's immigration status was an issue, factor, or consideration in the family court action" (p. 570).
- "Only fourteen percent of the attorneys believed that family court judges were knowledgeable in areas in which immigration law affects family court decisions. Fifty-three percent said the judges were not knowledgeable in these areas, and nearly thirty-five percent were unsure. Only seven percent of the attorneys believed that family court practitioners were knowledgeable in areas in which immigration law affects family court decisions" (p. 570-571).
- "Just as family law attorneys would benefit from a more in-depth understanding of immigration law, immigration attorneys would also benefit from a more in-depth understanding of family law. The topics are intricately linked; a major goal of our immigration laws is family reunification, and the vast majority of immigrants to the United States immigrate through family-based immigration visas. Immigration petitions—and removals from the United States—may depend on family court findings and adjudications" (p. 579).

8. New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* (2011), available at <https://www.ils.ny.gov/files/Accessing%20Justice.pdf>

Researchers find that relief or termination of a case is most dependent on having legal representation and not having been detained. Seventy-four percent of those who were never detained and had legal

representation had successful outcomes, compared to just three percent of those who had no legal representation and who were detained (p. 3). They find that not just quantity, but also quality, affects the likelihood of successful outcomes. This study was funded by the Leon Levy Foundation, The Governance Institute, and the Floersheimer Center for Constitutional Democracy.

Methodology:

They analyzed data from the Executive Office for Immigration Review dataset, Immigration and Customs Enforcement dataset, the Immigration Judge Survey, and the Nonprofit Removal-Defense Provider Survey. The authors of this study included individuals who work in law firms, non-profit organizations, immigration groups, bar associations, law schools, and federal, state, and local governments.

Highlights:

- “Individuals who filed relief applications were generally represented at much higher rates than those who only filed a voluntary departure application or did not file any relief applications at all. Ninety-five percent to 98% of nondetained individuals before New York Immigration Courts who filed applications for relief were represented. By contrast, only 48% to 67% percent of detained and represented individuals who were transferred outside of New York filed applications for relief” (p. 15-16).
- “Having counsel positively correlates with the filing of relief applications. By extension, the data suggests that being in detention and being transferred to remote detention facilities, which make it more difficult to access counsel, negatively impact an individual's likelihood of applying for relief.” (p. 16).
- “74% of those who were represented and not detained at the time their cases were completed before the immigration judge obtained successful outcomes. By contrast, nondetained individuals who were unrepresented succeeded only 13% of the time. The success rate dropped to 18% for those who were represented but detained at the time of case completion. The combination of not having representation and being detained at the time of case completion drove the success rate down to just 3%” (p. 19).
- “The impact of counsel on outcomes is, moreover, self-evident to those familiar with removal proceedings, as actions taken by legal representatives— like tracking down supporting evidence and expert witnesses— make a claim for relief more likely to succeed” (p. 22).
- “Improving the quality of legal representation must be a theme in any proposal for reform. Ensuring that immigrants in removal proceedings have legal representation is not enough. The goals identified in this Study can only be met if that representation meets basic standards of adequacy” (p. 27).

In 2017, the Vera Institute published a [report](#) on the New York Immigrant Family Unity Project. During a 2018 conference at Fordham University, Robert A. Katzmann (Chief Judge, U.S. Court of Appeals for the Second Circuit) delivered a presentation to reflect on the NY Immigrant Representation study and its continued success. Read the adaptation of the talk [here](#).

9. Theo Leibmann, *Family Court and the Unique Needs of Children and Families Who Lack Immigration Status*, 40 Colum. J.L. & Soc. Probs. 583 (2007), available at https://scholarlycommons.law.hofstra.edu/faculty_scholarship/599/

Leibmann is a professor of clinical law at Hofstra University. Family court matters and immigration issues are interrelated and many more undocumented families are coming before family court. When undocumented families go to family court for various matters, family court judges can help children receive special petitions if they are experiencing abuse or neglect at home. Legal representation can

help make these findings more accurate and also assist parents in avoiding admissions that might result in deportation.

Methodology:

He presents an overview and known statistics and best estimates about the number of undocumented families that go through immigration court.

Highlights:

- "The growing number of children and families in Family Court without legal status demands attention because of the truly profound consequences that can result from the action - and inaction - of family court practitioners and judges. When illegal immigrants become subject to the court's determinations, rulings, and orders, they face severe consequences with which families with legal status need not contend, such as detention in an immigration facility, deportation to another country, and permanent geographical separation from their homes and families" (p. 586).
- "[D]eterminations in Family Court can also have devastating negative consequences for undocumented immigrants or even immigrants with legal status who are not citizens. The harshest of these consequences, including deportation or a later denial of re-entry into the United States, can easily result from the kinds of admissions frequently made in Family Court, including child abuse, child neglect, child abandonment, domestic violence, violation of protection orders, and substance abuse" (p. 593).
- "While practitioners are generally aware that admissions in criminal cases can lead to harsh immigration consequences, few Family Court practitioners and judges are aware that many admissions in that Court can be equally harmful" (p. 594).
- "Parents, who may be in a batterer program or another rehabilitation program, may make an unnecessary admission to an immigration official, leading to their deportation. Having high quality legal representation can help parents refrain (?) from making these admissions in the first place" (p. 596).
- "Immigration law is complicated and labyrinthine. The immigrants who appear before me are predominantly non-English speaking, often from distinctly different cultures, and are often uneducated" (p. 624).