



# ACCESS TO COUNSEL IN IMMIGRATION COURT

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# EXECUTIVE SUMMARY

It has long been the case that immigrants have a right to counsel in immigration court, but that expense has generally been borne by the noncitizen.<sup>1</sup> Because deportation is classified as a civil rather than a criminal sanction, immigrants facing removal are not afforded the constitutional protections under the Sixth Amendment that are provided to criminal defendants.<sup>2</sup> Whereas in the criminal justice system, all defendants facing even one day in jail are provided an attorney if they cannot afford one, immigrants facing deportation generally do not have that opportunity.<sup>3</sup> Detained immigrants, particularly those held in remote locations, face the additional obstacle of accessing counsel from behind bars. Yet, in every immigration case, the government is represented by a trained attorney who can argue for deportation, regardless of whether the immigrant is represented.

The lack of appointed counsel may have a profound impact on immigrants' ability to receive a fair hearing. Past research has highlighted the importance of counsel for asylum seekers,<sup>4</sup> and regional studies have highlighted the important role attorneys play for immigrants navigating immigration courts in New York and San Francisco.<sup>5</sup> Yet, up to now, the debate about access to counsel has proceeded with little reliable national information on how many immigrants facing deportation obtain attorneys, the barriers to accessing representation, and how such representation impacts the outcomes of their cases.<sup>6</sup>

This report presents the results of the first national study of access to counsel in U.S. immigration courts. Drawing on data from over 1.2 million deportation cases decided between 2007 and 2012, the report provides much-needed information about the scope and impact of attorney representation in U.S. immigration courts.<sup>7</sup>

The main findings of this study include:

## **Access to counsel is scarce and unevenly distributed across the United States**

- Nationally, only 37 percent of all immigrants secured legal representation in their removal cases.
  - Immigrants in detention were the least likely to obtain representation. Only 14 percent of detained immigrants acquired legal counsel, compared with two-thirds of nondetained immigrants.
- Representation rates varied widely by court jurisdiction.
  - New York City’s representation rate for nondetained cases (87 percent) was a full 40 percent higher than that of Atlanta (47 percent).
  - Immigrants with court hearings in small cities were more than four times less likely to obtain counsel than those with hearings in large cities (11 percent in small cities versus 47 percent in large cities).
- Immigrants of different nationalities had very different representation and detention rates.
  - Mexican immigrants had the highest detention rate (78 percent) and the lowest representation rate (21 percent) of nationalities examined. In contrast, Chinese immigrants had the lowest detention rate (4 percent) and highest representation rate (92 percent).

## **Immigrants with attorneys fare better at every stage of the court process**

- Represented immigrants in detention who had a custody hearing were four times more likely to be released from detention (44 percent with counsel versus 11 percent without).
- Represented immigrants were much more likely to apply for relief from deportation
  - Detained immigrants with counsel were nearly 11 times more likely to seek relief such as asylum than those without representation (32 percent with counsel versus 3 percent without).
  - Immigrants who were never detained were five times more likely to seek relief if they had an attorney (78 percent with counsel versus 15 percent without).

- Represented immigrants were more likely to obtain the immigration relief they sought.
  - Among detained immigrants, those with representation were twice as likely as unrepresented immigrants to obtain immigration relief if they sought it (49 percent with counsel versus 23 percent without).
  - Represented immigrants who were never detained were nearly five times more likely than their unrepresented counterparts to obtain relief if they sought it (63 percent with counsel versus 13 percent without).

### **About the Data**

**This report analyzes the government’s own court records in immigration cases. Using the Freedom of Information Act (FOIA), these court records were obtained from the Executive Office for Immigration Review (EOIR), the division of the Department of Justice that conducts immigration court proceedings.<sup>8</sup> The complete EOIR administrative database included 6,165,128 individual immigration proceedings spanning fiscal years 1951 to 2013. These data were reduced to an analytical sample of 1,206,633 individual removal cases in which immigration judges reached a decision on the merits between fiscal years 2007 and 2012. The analysis set out in this report appears in expanded form, together with a detailed methodological appendix, in Ingrid Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review* 164, no. 1 (December 2015): 1–91.**



# UNEQUAL ACCESS TO IMMIGRATION REPRESENTATION

Nationally, only 37 percent of all immigrants, and a mere 14 percent of detained immigrants, secured legal representation. Rates of legal representation varied by a number of factors including geographic location of the court and the immigrant’s nationality. Immigrants with court hearings in large cities were more likely to be represented than those with hearings in small cities. Immigrants from Mexico were the least likely of any nationality group to be represented by counsel in their removal proceedings.

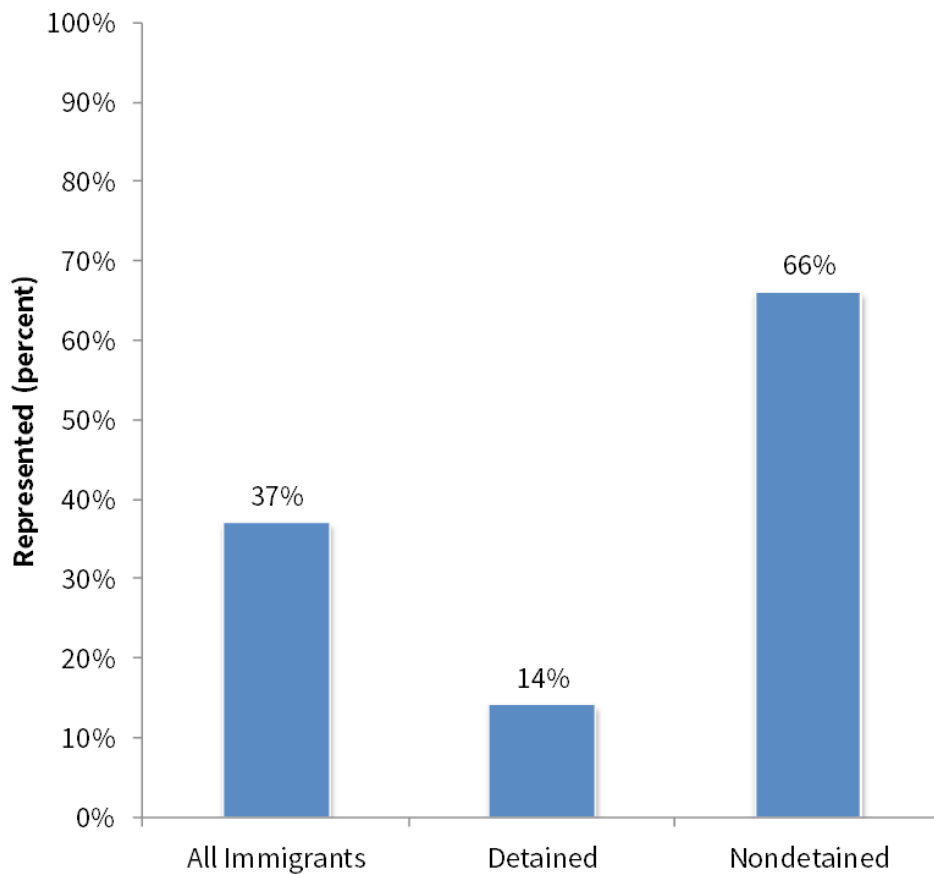
## **Defining Terms: Detained, Released, and Never Detained Immigrants**

**This report uses a number of different terms to refer to the custody status of immigrants in removal proceedings. More than half of immigrants facing removal in immigration court during the six-year period covered in this report (2007–2012) spent their entire case in government custody—almost 56 percent of immigrants were “detained” in prisons, jails, and detention centers across the country as they awaited the decision of an immigration judge. Some immigrants that started out in detention, however, were released from custody before their cases were decided. These “released” immigrants made up 10 percent of the immigrants in the study. Finally, some immigrants were never placed in government custody during the pendency of their case. These “never detained” immigrants accounted for 34 percent of immigrants in this study. Throughout this report the term “nondetained” is used to refer to both released and never detained immigrants as a group.**

## Overall representation rates are shockingly low, especially for detained immigrants

During the six-year period from 2007 to 2012, little more than one-third of immigrants were represented by counsel (37 percent).<sup>9</sup> Detained immigrants—held in prisons, jails, and detention centers across the country—were the least likely of all immigrants to be represented. As Figure 1 shows, across the six-year period studied, only 14 percent of detained immigrants secured an attorney, almost five times less than nondetained immigrants (66 percent).<sup>10</sup>

**Figure 1: Representation Rates for Immigrants in Removal Proceedings, 2007–2012**  
Detained Immigrants Much Less Likely to Have Legal Counsel



Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.



There are many reasons why it may be harder for immigrants in detention to obtain representation. By definition, they are confined in prisons, jails, and federal detention centers that do not allow them to travel to an attorney's office. Instead, they must rely on telephones in their facilities to call attorneys, and sometimes phones may not be available.<sup>11</sup> Attorneys must adhere to strict visitation rules, making it difficult for lawyers to communicate with their clients. Unlike the criminal justice system, which requires defendants to stand trial in the same district in which the alleged offense occurred, in the immigration system noncitizens can be transferred to detention centers located a great distance from where they reside or were apprehended.<sup>12</sup> This means that they are far from their families, lawyers, and the evidence they need to support their cases. Furthermore, many detention facilities are located in remote areas.

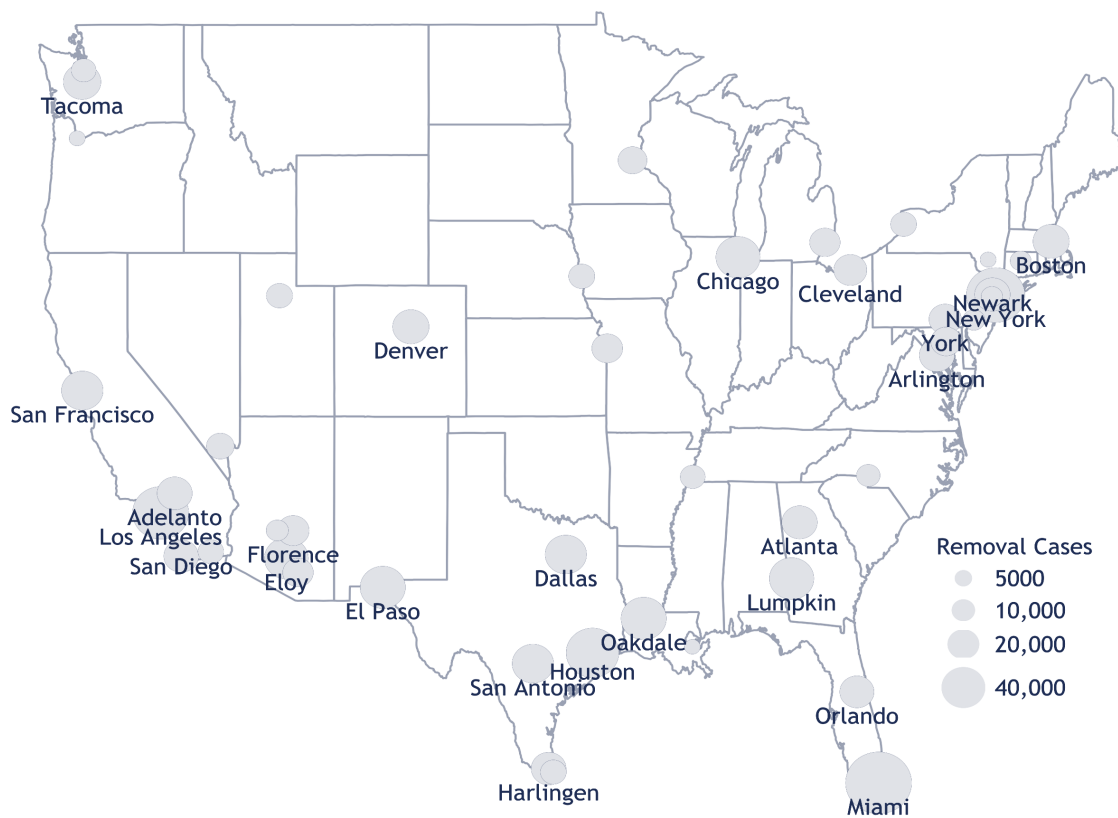
Ability to pay is another obstacle to obtaining representation. In order to have representation, immigrants generally must be able to pay for their services. Immigrants who are detained are unable to work to pay for counsel. Although some pro bono or reduced fee services are available, they are not nearly sufficient to meet demand. Analysis of the national representation data reveals that only a very small proportion of immigrants ever received some form of pro bono representation.<sup>13</sup>

These barriers to finding counsel are especially troubling considering that immigration enforcement has become increasingly reliant on detention.<sup>14</sup> Today, federal funding allows for approximately 34,000 noncitizens to be held in federal detention centers, jails, and prisons each day.<sup>15</sup> This heavy reliance on detention to facilitate deportation only exacerbates the serious problems noncitizens have obtaining legal counsel.

## Representation rates vary dramatically across different court jurisdictions

From 2007 to 2012, over 1.2 million deportation cases were decided by U.S. immigration courts. As depicted in the map in Figure 2, these cases were unequally distributed across different jurisdictions.<sup>16</sup> The largest circles on the map represent immigration courts that decided 40,000 or more cases during the study period, with smaller circles representing courts with correspondingly fewer cases.

**Figure 2: Immigration Courts, by Volume and Location, 2007–2012**  
Cases Concentrated in Courts on East Coast and Along Southern Border



Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012

Figure 2 shows that many of the busiest courts in the country are concentrated along the Southwest border and the East coast. Only three cities—Chicago, Cleveland, and Detroit—handled the majority of all cases adjudicated in the Midwest. Few of the over 1.2 million removal cases were decided at courts located in the Northwest.

Not only were immigration removal cases unevenly distributed among the different court jurisdictions, but each court also had different levels of attorney representation. Given that detention status is so interrelated with whether an immigrant is represented, it is useful to separately examine detained and nondetained representation rates when looking at court jurisdictions.

Figure 3 shows levels of representation for nondetained immigrants in the 20 court locations that decided the most nondetained cases during the six-year period studied. The share of nondetained immigrants with counsel across all cities was 66 percent.

**Figure 3: Nondetained Representation Rates in 20 Jurisdictions, 2007–2012**

	Percent Represented	Total Cases
New York, NY	87%	67,943
San Francisco, CA	78%	22,644
Newark, NJ	74%	16,705
Houston, TX	69%	16,694
Boston, MA	69%	19,258
Los Angeles, CA	67%	59,368
Denver, CO	67%	9,876
Philadelphia, PA	66%	8,874
Seattle, WA	65%	11,334
Baltimore, MD	64%	15,634
Orlando, FL	63%	22,837
Dallas, TX	61%	13,323
Miami, FL	59%	57,697
Memphis, TN	56%	11,411
Chicago, IL	56%	19,327
Arlington, VA	55%	17,800
San Antonio, TX	52%	11,230
Charlotte, NC	50%	9,594
Atlanta, GA	47%	18,473
Kansas City, MO	47%	9,271

Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

In the busiest twenty nondetained court jurisdictions, representation rates reached as high as 87 percent in New York City and 78 percent in San Francisco. At the low end, only 47 percent of nondetained immigrants in Atlanta, Georgia, and Kansas City, Missouri, secured representation. In other words, the representation rate for nondetained immigrants in New York City was a full 40 percent higher than in Atlanta or Kansas City.

Similar disparities existed across courts handling detained cases. Figure 4 lists the twenty court jurisdictions that decided the highest number of detained cases during the six-year period studied. The share of detained immigrants with counsel across all cities was 14 percent.

**Figure 4: Detained Representation Rates in 20 Jurisdictions, 2007–2012**

	Percent Represented	Total Cases
El Paso, TX	22%	39,648
Miami, FL	20%	33,982
San Antonio, TX	20%	24,822
Los Fresnos, TX	18%	12,714
York, PA	18%	20,861
San Diego, CA	17%	16,674
San Francisco, CA	15%	13,635
Harlingen, TX	14%	17,432
Adelanto, CA	13%	24,996
Houston, TX	13%	42,706
Chicago, IL	12%	22,178
Dallas, TX	9%	22,732
Denver, CO	9%	17,530
Florence, AZ	9%	20,664
Eloy, AZ	8%	40,617
Tacoma, WA	8%	29,143
Oakdale, LA	6%	42,521
Lumpkin, GA	6%	41,674
Cleveland, OH	5%	13,479
Tucson, AZ	0%	17,053

Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

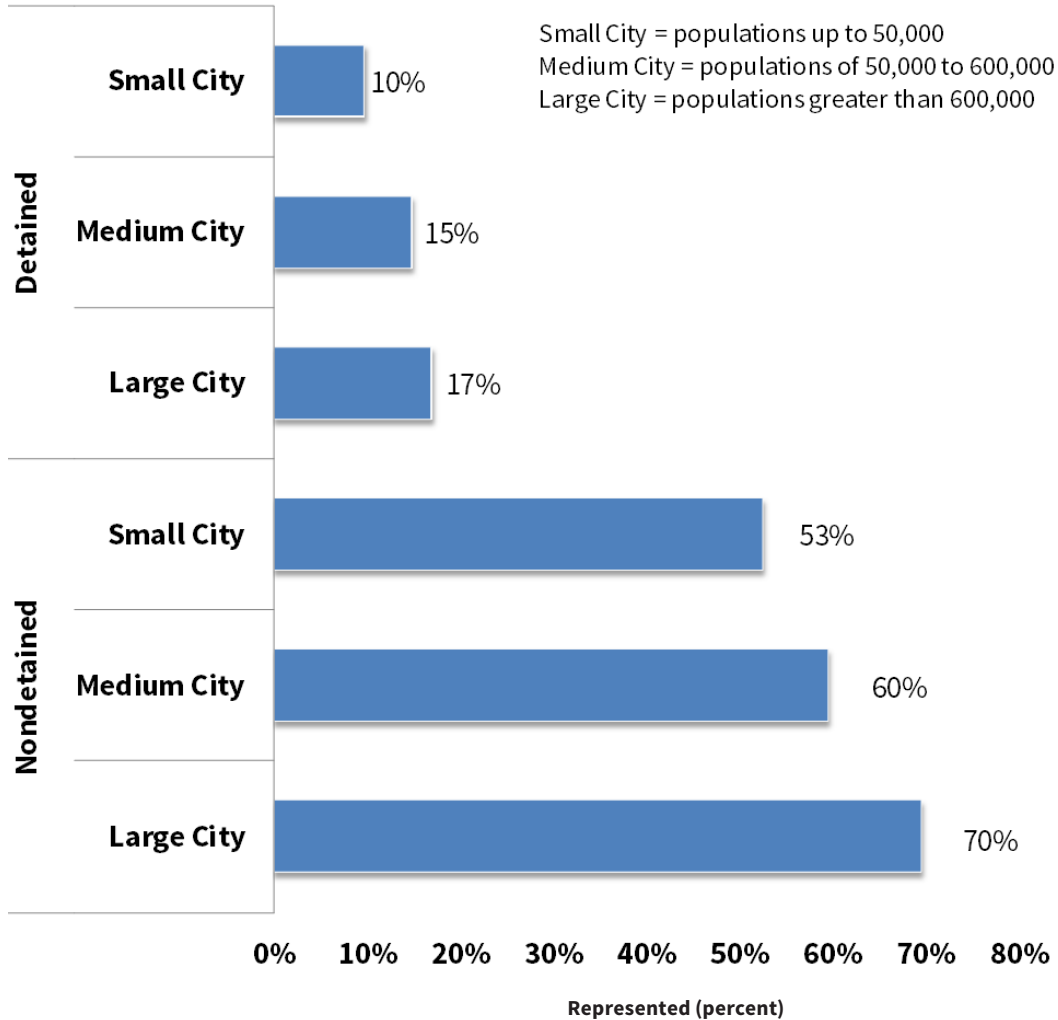
Within these jurisdictions with a high volume of detained cases, the proportion of detained immigrants represented fluctuated by as much as 22 percentage points. The highest detained representation rate of 22 percent was in El Paso, Texas, while the lowest rate of 0 percent was in Tucson, Arizona. Further investigation revealed that during the time of this study immigration judges in Tucson utilized a “quick court” in which expedited hearings are held in Border Patrol detention stations and judges’ chambers.<sup>17</sup> The end result was the lowest detained representation rate in the country and lightning-fast processing times (97 percent of detained cases in Tucson were decided within one day).

### **Immigrants with hearings in small cities face additional barriers**

Finding counsel was particularly challenging for those with cases in immigration courts located in small cities with populations of less than 50,000. Strikingly, over the six-year period studied, immigrants with their cases heard in small cities were the least likely to obtain counsel.<sup>18</sup> Immigrants with court hearings in large cities had a representation rate of 47 percent, more than four times greater than the 11 percent representation rate of those with hearings in small cities.

A more detailed description of this city size analysis of representation—broken down by detention status—is displayed in Figure 5. Notably, both detained and nondetained immigrants were less likely to obtain counsel when their case was decided in a small city, as compared to a medium or large city. Immigrants detained in small cities had the lowest representation rate of all—only 10 percent over the six-year period studied.

**Figure 5: Representation Rates in Removal Cases,  
by City Size and Detention Status, 2007–2012**  
Immigrants in Small Cities Much Less Likely to Have Attorneys



Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

Furthermore, detained immigrants, who were already less likely to obtain representation, were also disproportionately concentrated in small cities. Approximately one-third of all detained cases were heard in these remote court locations, further intensifying the obstacles detained immigrants face in accessing counsel.

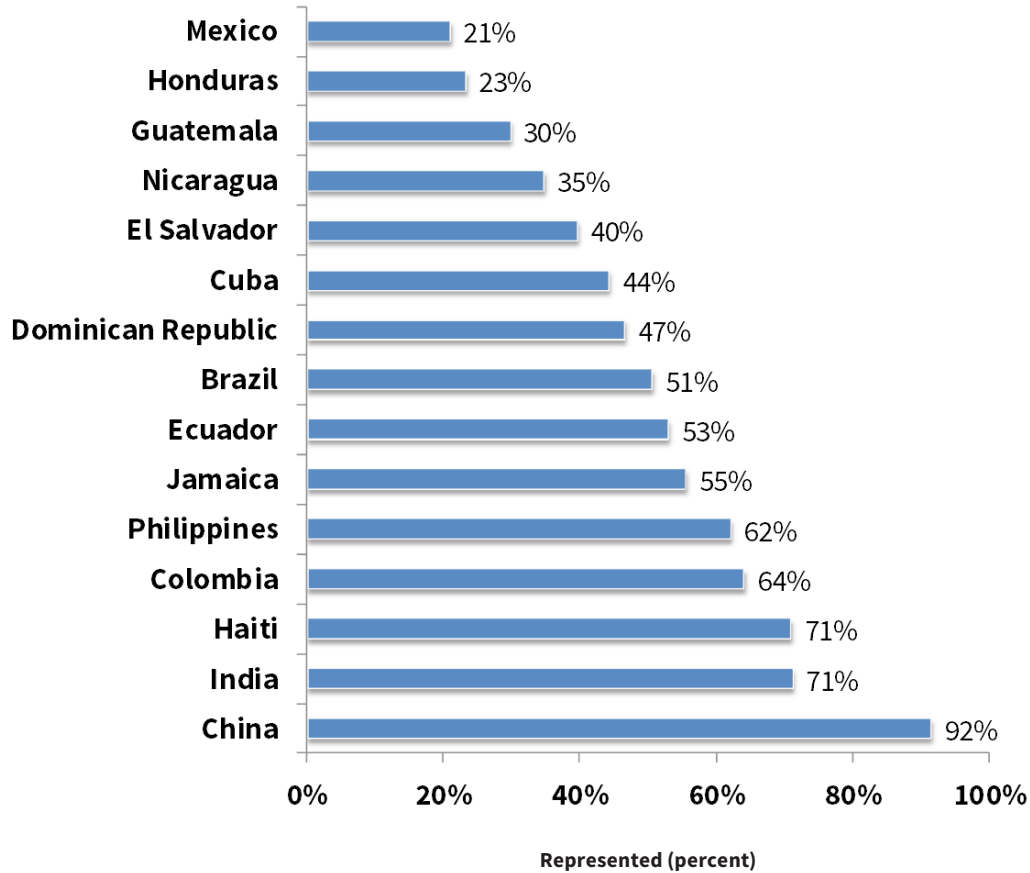
These statistics also reflect the reality that few immigration attorneys practice in small cities. Analyzing attorney records in the court files revealed that some cities where large numbers of detained immigration cases are decided had few or no immigration attorneys with practices based in the same city as the detention center.<sup>19</sup> For example, Lumpkin, Georgia’s immigration court, which completed 42,006 removal cases during the study period, did not have a single attorney with his or her practice located in that city. Oakdale, Louisiana’s immigration court, which completed 43,650 cases, had only four practicing immigration attorneys based in the city. This means that the vast majority of immigration attorneys who do take cases in these remote courts must travel long distances to attend court hearings, further hindering access to counsel by increasing the costs associated with providing legal services.

### **Representation rates vary widely based on the nationality of the immigrant**

Immigrants of different nationalities also had very different representation rates. The 15 most common countries of origin in removal cases and their respective representation rates are shown in Figure 6. Mexican nationals were by far the largest nationality group in removal proceedings, but they were also the least likely to be represented by counsel. Only 21 percent of the 574,448 Mexicans who were put in removal proceedings had an attorney. In contrast, 92 percent of Chinese and 71 percent of Haitian and Indian nationals in removal proceedings secured counsel.

**Figure 6: Representation Rates Among Nationalities with Greatest Number of Removal Cases Decided, 2007–2012**

Mexican Nationals Least Likely to Be Represented, Chinese Nationals the Most Likely

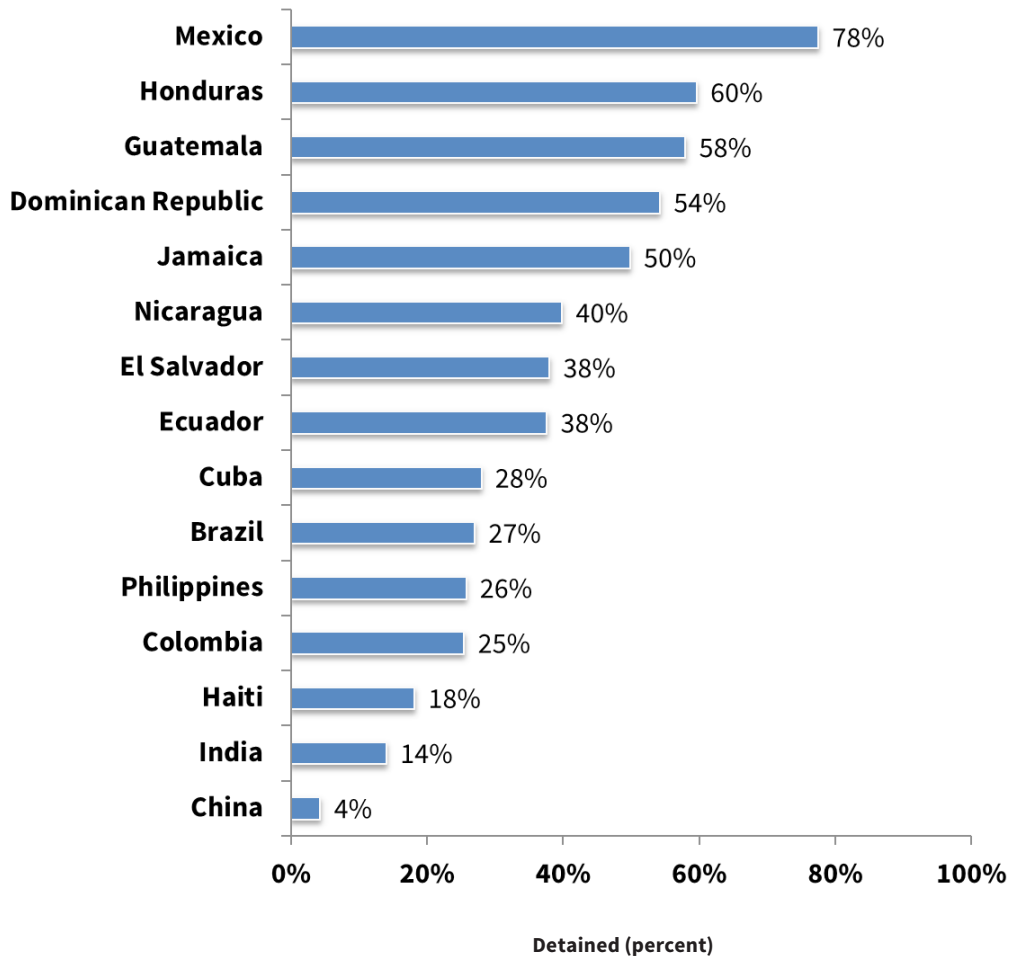


Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

Immigrants of different nationalities also had very different detention rates, as illustrated in Figure 7. Mexican nationals in removal proceedings were detained 78 percent of the time. Similarly, Central American immigrants were less likely to have an attorney and more likely to be in detention. Twenty-three percent of Hondurans were represented and 60 percent were detained; 30 percent of Guatemalans were represented and 58 percent were detained. In contrast, Chinese nationals in immigration proceedings were only detained 4 percent of the time, Indians 14 percent of the time, and Haitians 18 percent of the time, and nationals from those three countries were much more likely than Mexicans and Central Americans to be represented by counsel. These findings raise compelling questions as to why Mexican nationals and other Latinos were more likely to be in immigration detention.<sup>20</sup>



**Figure 7: Detention Rates Among Nationalities with Greatest Number of Removal Cases Decided, 2007–2012**  
 Mexicans Most Likely to Be Detained, Chinese the Least Likely



Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

It is important to acknowledge that the difference in representation rates across nationalities could be attributed to a number of additional factors. Economic status certainly plays a role since the scarcity of pro bono resources demands that the majority of immigrants who obtain representation must be able to afford an attorney. The ability to find an attorney could also be influenced by the strength of the social networks that different immigrant groups have to assist them in finding counsel.<sup>21</sup>

# IMMIGRANTS WITH LEGAL REPRESENTATION ARE MORE LIKELY TO SUCCEED IN THEIR CASES

The fact that so few immigrants in deportation proceedings are represented by counsel is important because having an attorney is associated with successful immigration outcomes. The data show that immigrants with legal counsel were more likely to be released from detention, avoid being removed in absentia, and seek and obtain immigration relief.

## Two Stages of Immigration Removal

In this report, “removal” refers to a court proceeding in which an immigration judge determines whether an immigrant apprehended while attempting to enter the United States may remain, or whether one already in the United States must be deported.<sup>22</sup>

Removal is a two-stage process. In the first stage of the process, the Department of Homeland Security (DHS) files a charging document (known as a “Notice to Appear”) against the immigrant (referred to in immigration court as the “respondent”), and the judge decides whether to sustain those charges. If the Notice to Appear does not state a valid ground for removal, the judge must terminate the case. For example, the judge will terminate the case if the respondent is a U.S. citizen. For cases that are terminated, the respondent will generally be allowed to remain in the United States.

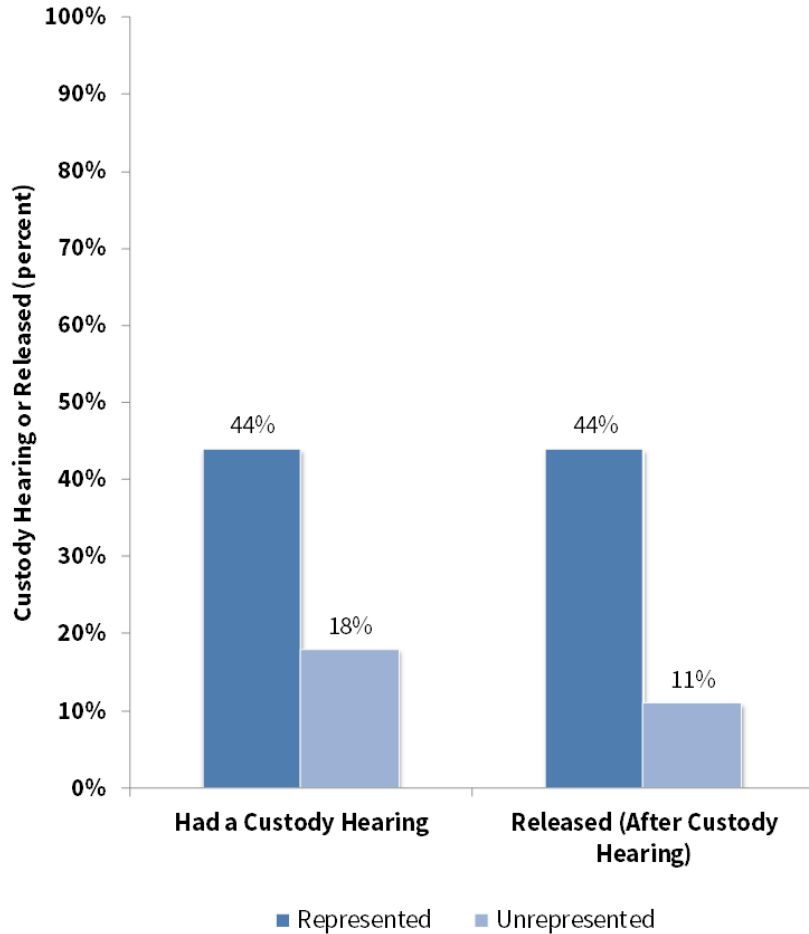
If the immigrant is found to be removable, the second stage of the proceeding begins. In this stage, the immigrant will be ordered removed unless he or she pursues an application for relief. For example, an immigrant may be eligible for asylum based on a well-founded fear of persecution on certain grounds. Alternatively, an immigrant may obtain a limited form of relief called “cancellation of removal” based on, among other factors, a long-term residence in the United States. If the judge grants the application for relief, the immigrant is allowed to remain in the United States. If, however, the application for relief is denied, the immigrant will be required to leave the United States.

## **Immigrants with representation are more likely to be released from detention**

Immigrants in detention were more likely to secure release with the aid of an attorney. For those immigrants who are eligible for release on bond or other conditions, immigration judges may hold a custody hearing if one is requested. When judges rule on an immigrant's request for release prior to trial, they must weigh numerous factors related to risk of flight and public safety. Immigrants who are granted bond will be released if they are financially able to post the required amount. Unfortunately, some immigrants remain detained because they are simply unable to afford the bond amount set by the judge.

Overall, as the left side of Figure 8 displays, 44 percent of represented detainees were granted a custody hearing before the judge, compared to only 18 percent of detainees without counsel. This increase may indicate that having an attorney is helpful in navigating the complex rules governing eligibility for custody hearings. In addition, once a custody hearing was held, represented litigants were more likely to be released from custody. Of those respondents with custody hearings, as seen on the right side of Figure 8, 44 percent of represented respondents were released, compared to only 11 percent of unrepresented respondents.<sup>23</sup>

**Figure 8: Frequency of Custody Hearings and Release, by Representation Status, 2007–2012**  
 Detained Immigrants with Attorneys More Likely to Have a Custody Hearing and to Be Released



Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

In conclusion, this analysis suggests that early involvement of attorneys in detained cases is associated with an increased likelihood of release from detention. This finding of a correlation between release and representation is especially important because detaining immigrants is enormously expensive for the federal government.<sup>24</sup> In fiscal year 2016, Congress allocated more than \$2 billion for detention.<sup>25</sup> These data thus support other research concluding that a government-funded public defender system for immigrants could potentially pay for itself by helping to reduce court and detention costs associated with having immigrants pursue their immigration cases without the advice of counsel.<sup>26</sup>

## **Immigrants with representation are more likely to appear in court**

Immigrants who are not detained must appear in court at a later date for their immigration removal hearing. If, however, the immigrant fails to appear for one or more of these hearings, the judge may enter a removal order without the immigrant being present. These removal orders issued when the immigrant fails to appear are referred to as “in absentia removal orders.”

The data analyzed for this report show that immigrants who were represented by attorneys were far more likely to attend their immigration court hearings and thus avoid these in absentia orders. Ninety percent of unrepresented immigrants with removal orders were removed in absentia versus only 29 percent of their represented counterparts with removal orders.<sup>27</sup> This finding suggests that representation by counsel is strongly associated with immigrants coming to court. When immigrants appear in immigration court, immigration judges can more effectively do their jobs.

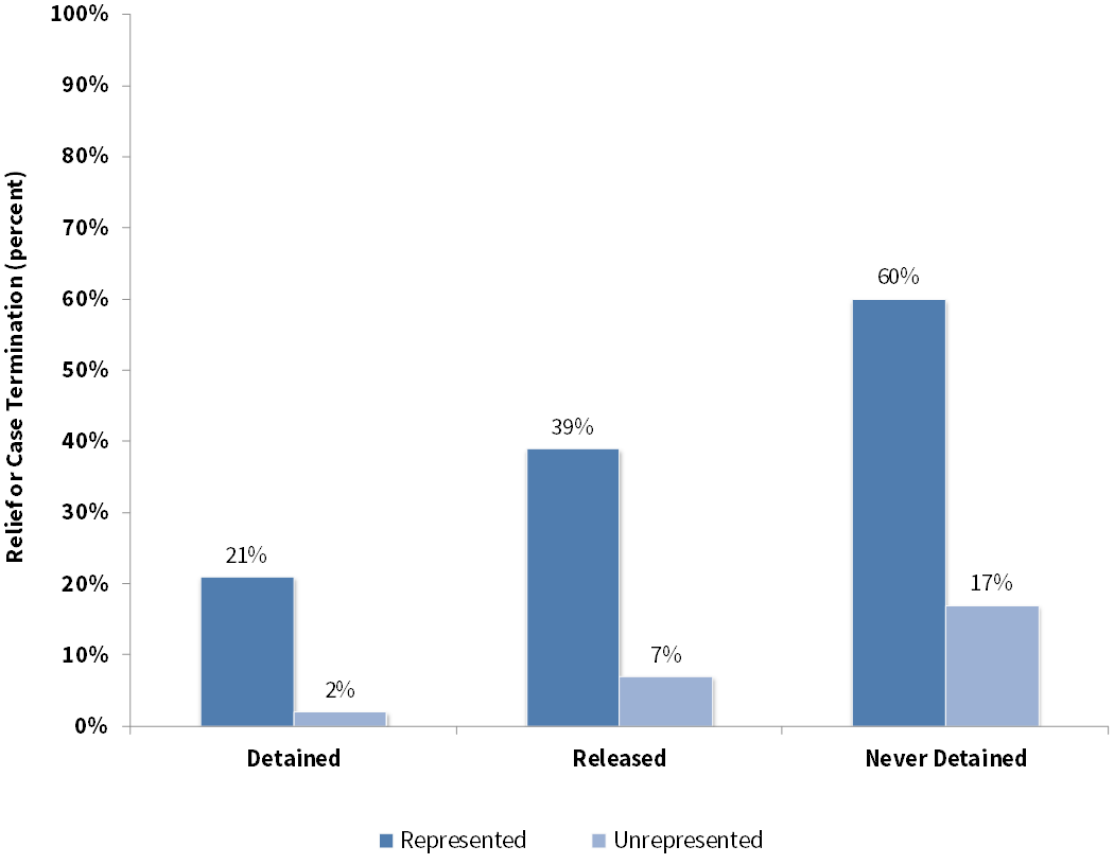
## **Immigrants with representation are more likely to win their removal cases**

Not only are represented immigrants less likely to be ordered removed in absentia, they are also more likely to win their removal cases.

Success in a removal case can happen in either of the two stages of immigration proceedings. The immigrant can succeed in the first stage of the removal process if the judge terminates the case because the charges do not state a valid ground for removal. The immigrant can also succeed in the second stage of the removal process if the judge grants the immigrant relief from deportation so that he or she can remain lawfully in the United States.<sup>28</sup>

Combining terminations and grants of relief as a measure of success, Figure 9 shows that both detained and nondetained immigrants with legal counsel had higher success rates than those without representation. Depending on custody status, representation was associated with a 19 to 43 percentage point boost in rate of case success. The columns on the left show that detained immigrants with representation, when compared to their unrepresented counterparts, were ten-and-a-half times more likely to succeed. The center columns show that immigrants who were released from detention and had a lawyer were five-and-a-half times more likely to have their cases terminated or be granted relief than their counterparts. Finally, the columns on the right show that immigrants who were never detained were three-and-a-half times more likely to succeed. These findings suggest that having an attorney to help navigate the complex removal process enhances the chance of success in removal proceedings.

**Figure 9: Successful Case Outcomes (Termination or Relief) in Removal Cases, by Detention and Representation Status, 2007–2012**  
Immigrants with Representation More Likely to Succeed



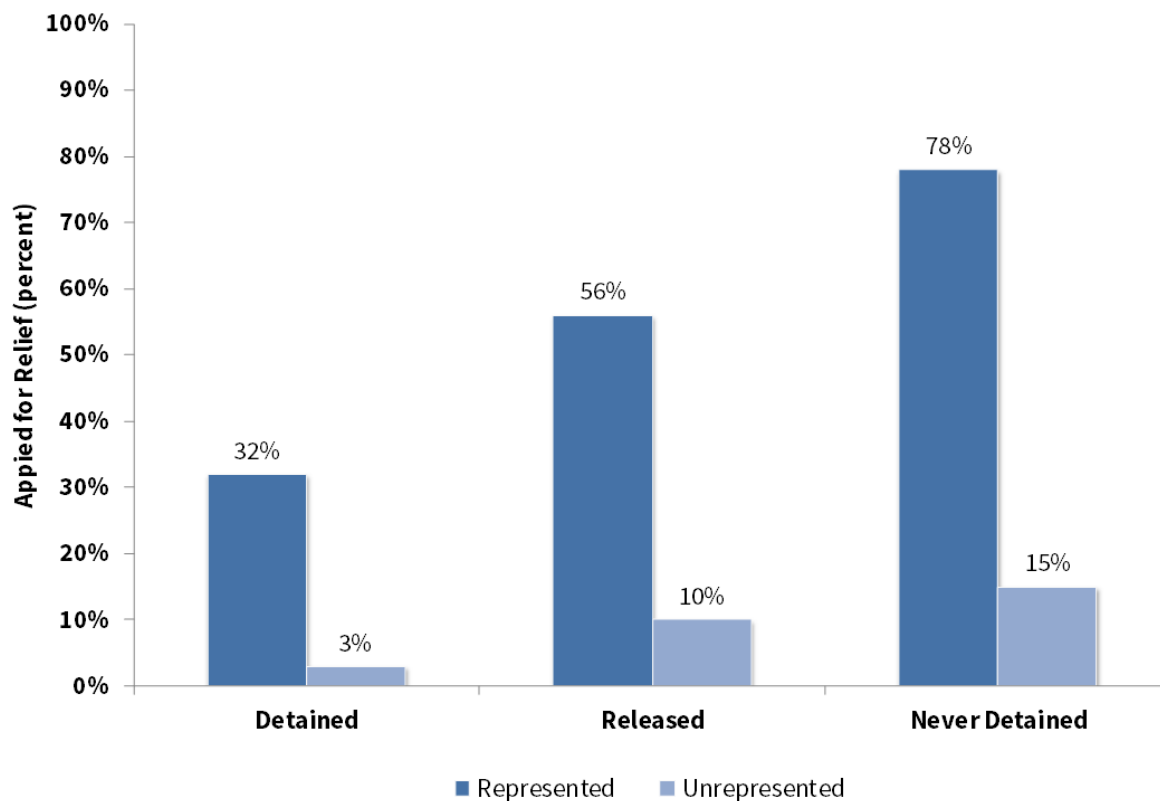
Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

## Immigrants with representation are more likely to seek and obtain relief from deportation

Immigrants facing removal cannot obtain relief unless they apply for it. Yet the data reveal that immigrants without counsel were also far less likely to pursue relief. And, if they did pursue relief, they were less likely than those with counsel to prevail.

Figure 10 reports these patterns in applying for relief across every detention status. For example, 78 percent of never detained respondents with counsel applied for relief, compared to only 15 percent of never detained respondents without counsel. Among the detained, 32 percent of those with counsel applied for relief, compared to only 3 percent of detained respondents without counsel. Similar patterns exist among those released from detention: 56 of those with counsel applied for relief, compared to only 10 percent of those without counsel.

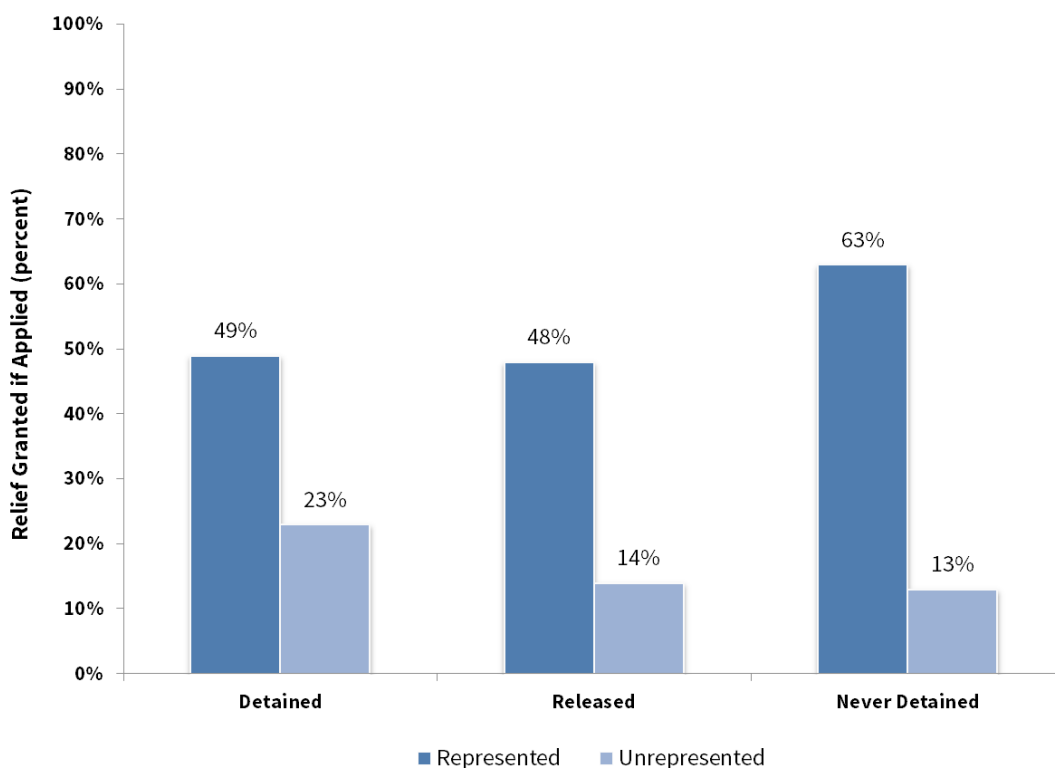
**Figure 10: Applications for Relief in Removal Cases, by Detention and Representation Status, 2007–2012**  
Immigrants with Representation More Likely to Apply for Relief



Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

Once respondents passed this procedural step of submitting an application, represented respondents continued to outperform their unrepresented counterparts. Figure 11 contains these findings. Never detained respondents with counsel were almost five times more likely to win relief; released respondents with counsel were almost three-and-a-half times more likely to win relief; and detained respondents with counsel were over two times more likely to win relief.

**Figure 11: Applications for Relief Granted, by Detention and Representation Status, 2007–2012**  
Immigrants with Representation More Likely to Be Granted Relief

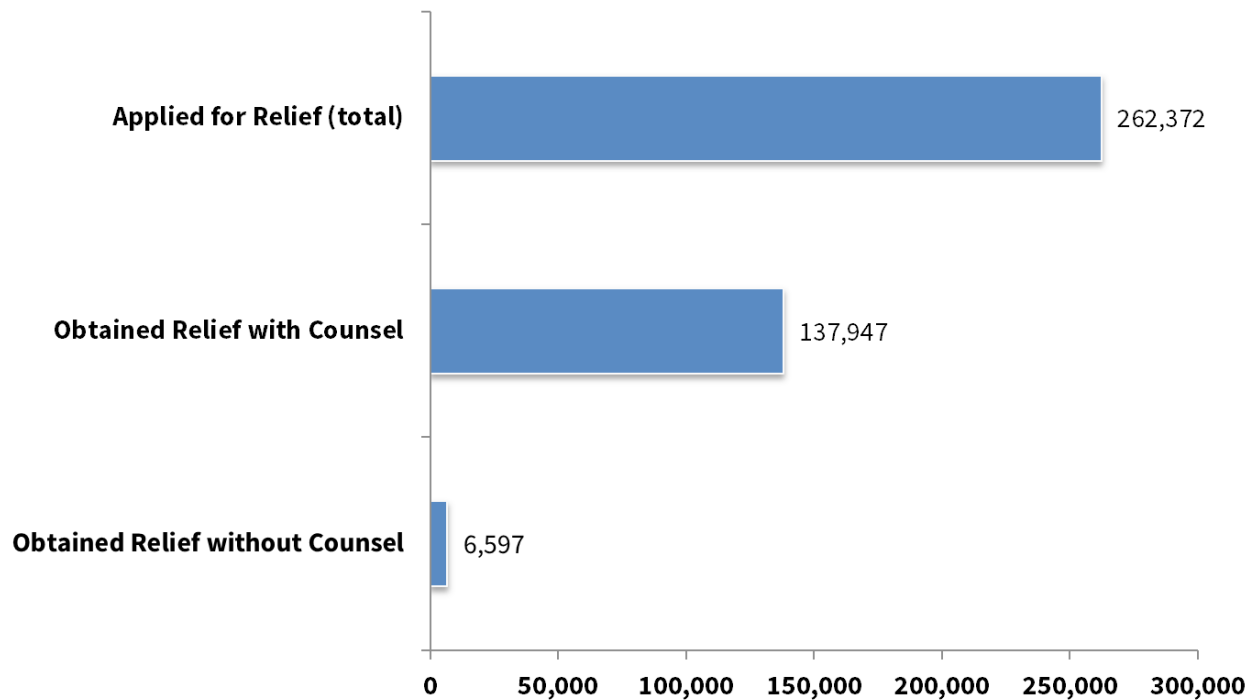


Source: Authors’ analysis of Executive Office for Immigration Review data, 2007–2012.

Examining the absolute numbers of immigrants who won relief in immigration court underscores even more dramatically the crucial role of attorneys. As seen in Figure 12, during the six-year period from 2007 to 2012, a total of 272,352 immigrants in removal proceedings applied for relief from removal. Among these immigrants seeking relief, just over half (144,544 total) were granted the relief they sought by the immigration judge. Yet, only 6,597 of these respondents, or two percent of those who applied for relief, succeeded without an attorney. This dismal statistic reveals just how rare it is for immigrants without counsel to present and win their claims in immigration court.



**Figure 12: Applications and Grants of Relief,  
by Representation Status, 2007–2012**  
Very Few Immigrants Obtained Relief Without Counsel



Source: Authors' analysis of Executive Office for Immigration Review data, 2007–2012.

In short, at every stage in immigration court proceedings, representation was associated with considerably more successful case outcomes.

## CONCLUSION

By reviewing over 1.2 million deportation cases decided across the United States over a six-year period, this report provides an urgent portrait of the lack of counsel in immigration courts. In it, we reveal that 63 percent of all immigrants went to court without an attorney. Detained immigrants were even less likely to obtain counsel—86 percent attended their court hearings without an attorney. For immigrants held in remote detention centers, access to counsel was even more severely impaired—only 10 percent of immigrants detained in small cities obtained counsel.

Addressing the barriers to obtaining legal counsel is important because having an attorney was strongly associated with positive outcomes. Represented immigrants were more likely to be released from detention. Represented immigrants were more likely to have their cases terminated, to seek relief from removal, and to obtain the relief they sought. In fact, detained immigrants with counsel, when compared to detained immigrants without counsel, were ten-and-a-half times more likely to succeed; released immigrants with counsel were five-and-a-half times more likely to succeed; and never detained immigrants with counsel were three-and-a-half times more likely to succeed.

# ENDNOTES

1. See I.N.A. § 240(b)(4)(A) (providing that “the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings”); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990) (finding that immigrants have a due process right to obtain counsel of their choice at their own expense).
2. Since 1997, the term “removal” has referred to the immigration judge’s decision as to whether an immigrant attempting to enter the United States may remain (“exclusion”), or whether one already in the United States must be deported (“deportation”).
3. There is an exception for certain individuals with serious mental disorders. See *Franco-Gonzalez v. Holder*, 767 F. Supp. 2d 1034 (C.D. Cal. 2011), accessed July 25, 2016, <https://www.scribd.com/document/137620089/Franco-Order-Re-Permanent-Injunction>; see also U.S. Department of Justice, Executive Office for Immigration Review, “Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions,” April 22, 2013, accessed July 25, 2016, <https://www.justice.gov/eoir/pages/attachments/2015/04/21/safeguards-unrepresented-immigration-detainees.pdf>. Additionally, in 2014 the Department of Justice and the Corporation for National Community Service partnered to create the Justice AmeriCorps program to provide legal representation to unaccompanied minors in immigration court proceedings. See Department of Justice, “Justice Department and CNCS Announce \$1.8 Million in Grants to Enhance Immigration Court Proceedings and Provide Legal Assistance to Unaccompanied Children,” September 12, 2014, accessed September 23, 2016, <http://www.justice.gov/opa/pr/justice-department-and-cncs-announce-18-million-grants-enhance-immigration-court-proceedings>.
4. For example, the GAO found that immigrants petitioning for asylum were more likely to win their cases if they had legal representation. See U.S. Government Accountability Office, *U.S. Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges*, GAO-08-940 (Washington, DC, 2008), accessed July 25, 2016, <http://www.gao.gov/new.items/d08940.pdf> (“Representation generally doubled the likelihood of affirmative and defensive cases being granted asylum . . .”); see also Jaya Ramji-Nogales et al., “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Review* 60, no. 2 (2007): 340 (reporting that Mexican, nondetained asylum seekers “were granted asylum at a rate of 45.6%, almost three times as high as the 16.3% grant rate for those without legal counsel”).
5. See N. Cal. Collaborative for Immigrant Justice, *Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California* (October 2014), accessed July 25, 2016, <https://media.law.stanford.edu/organizations/clinics/immigrant-rights-clinic/11-4-14-Access-to-Justice-Report-FINAL.pdf> (analyzing 8,992 cases decided by the San Francisco immigration court between March 1, 2013 and February 28, 2014); Steering Comm. of the N.Y. Immigrant Representation Study Report, “Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings, New York Immigrant Representation Study Report: Part 1,” *Cardozo Law Review* 22, no. 362 (2011) (analyzing 71,767 cases with at least one hearing in New York immigration courts between October 1, 2005 and July 13, 2010). See also The Cal. Coal. for Universal Representation, *California’s Due Process Crisis: Access to Legal Counsel for Detained Immigrants* (June 2016), accessed July 25, 2016, <http://www.publiccounsel.org/tools/assets/files/0783.pdf> (analyzing 110,131 cases decided in California immigration courts between 2012 and 2015).
6. It is helpful to clarify what is not included in the analysis presented in this report. First, this report excludes immigration enforcement decisions that are not made by immigration judges. Indeed, a majority of immigrants removed from the country between 2007 and 2012 never saw an immigration judge. American Immigration Council, *Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice* (Washington, DC, 2013), 9, <https://www.americanimmigrationcouncil.org/research/two-systems-justice-how-immigration-system-falls-short-american-ideals-justice>. Instead, they were deported based on administrative procedures such as “expedited removal” or “reinstatement of removal.” These types of summary expulsion procedures that deny immigrants judicial review of the merits of their cases are not considered in this report. See generally Jill E. Family, “A Broader View of the Immigration Adjudication Problem,” *Georgetown Immigration Law Review* 23, no. 595 (2009) (summarizing the methods, aside from removal hearings, that the government uses to deport noncitizens). Second, this report only examines removal proceedings, which account for 97 percent of immigration court proceedings. Finally, although immigration decisions may be appealed, our focus is exclusively on representation at the immigration court level. All cases analyzed in our report have reached a final decision on the merits by the immigration judge. For additional methodological details and findings, see Ingrid Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review* 164, no. 1 (2015).
7. In addition to the quantitative analysis of this deportation data from the Executive Office for Immigration Review (EOIR), qualitative research provided an on-the-ground understanding of access to counsel in immigration court. This investigation included attending court sessions at six of the highest-volume immigration courts (namely, Chicago, Illinois; Elizabeth, New Jersey; Houston, Texas; Los Angeles, California; Newark, New Jersey; and San Antonio, Texas), observations of the know-your-rights programs provided to detained immigrants in these courts, and interviews with representatives of the National Association of Immigration Judges and attorneys representing immigrants in removal proceedings around the country. See Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 6-7.
8. The authors obtained the immigration court data for analysis through their capacity as Fellows with the Transactional Records Access Clearinghouse (TRAC), a data-gathering and research nonprofit organization at Syracuse University. The data was acquired by TRAC from EOIR using the Freedom of Information Act (FOIA).
9. This report counts immigrants as represented if: 1) an attorney files a “Notice of Entry of Appearance” form, known as an EOIR-28, with the court prior to the completion of the merits proceeding; or 2) an EOIR-28 form was filed after the judge reached the decision on the merits, but an attorney appeared in at least one hearing within the relevant merits proceedings. For more on the method used to measure when immigrants were represented by counsel, see Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 79-81.
10. In this report, the term “nondetained” includes both those who were never detained while their cases were pending,

as well as those who were detained but later released from detention. See Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 30-31.

11. See generally American Civil Liberties Union, “ACLU Settlement with ICE Will Allow Immigrants Held in Detention to Use Functional Telephones for Contacting Lawyers, Families, Government Agencies” (June 14, 2016), accessed July 25, 2016, <https://www.aclu.org/news/aclu-settlement-ice-will-allow-immigrants-held-detention-use-functional-telephones-contacting> (summarizing a legal settlement requiring U.S. Immigration and Customs Enforcement to provide 40 additional telephone booths and provide detainees free attorney calls in four California detention facilities).
12. Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* (New York, NY, 2009), accessed July 25, 2016, <https://www.hrw.org/sites/default/files/reports/us1209webwcover.pdf>.
13. See Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 27-28.
14. For an overview of the astonishing expansion in immigration detention, see Jennifer M. Chacón, “Immigration Detention: No Turning Back?,” *South Atlantic Quarterly* 113, no. 3 (2014); César Cuauhtémoc García Hernández, “Immigration Detention as Punishment,” *UCLA Law Review* 61, no. 1346 (2014); Anil Kalhan, “Rethinking Immigration Detention,” *Columbia Law Review Sidebar* 110, no. 42 (2010); Juliet P. Stumpf, “Civil Detention and Other Oxymorons,” *Queen’s Law Review* 40, no. 55 (2014).
15. See Nick Miroff, “Controversial Quota Drives Immigration Detention Boom,” *The Washington Post*, October 13, 2013, accessed July 25, 2016, [https://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890\\_story.html](https://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890_story.html).
16. Given their geographic location, the following immigration court locations are not included in Figure 2: Hagatna, Guam; Saipan, Northern Mariana Islands; Honolulu, Hawaii; and Guaynabo, Puerto Rico. In addition, three U.S. cities with more than one immigration court were merged (Houston, Texas; Miami, Florida; and New York City, New York).
17. See Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 38.
18. Immigration court cities were categorized according to size in the following manner: cities with populations fewer than 50,000 were categorized as small, those with populations between 50,000 and 600,000 were categorized as medium, and those with populations greater than 600,000 were categorized as large. See Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 40-41, 82-83.
19. The number of unique attorneys with practices in each city was calculated by pulling the identification codes, names, and address information of all attorneys that appeared in that city’s immigration courts. See Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 81-82.
20. See César Cuauhtémoc García Hernández, “Naturalizing Immigration Imprisonment,” *California Law Review* 103, no. 6 (2015): 1455-65 (documenting the “racially skewed enforcement” of immigration and criminal laws against Mexicans and other Latinos that “threaten[s] to delegitimize immigration law”); Yolanda Vázquez, “Constructing Crimmigration: Latino Subordination in a ‘Post-Racial’ World,” *Ohio State Law Journal* 76, no. 3 (2015) (arguing that the detention of Latinos has devastated Latino communities, thereby contributing to their inability to gain economic and political stability).
21. For discussion of additional factors that could influence varying rates of detention and representation by nationality, see Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 45-46.
22. For additional discussion of the removal process, see U.S. Department of Justice, Executive Office for Immigration Review, “FY 2012 Statistical Year Book,” revised March 2013, <https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/04/fy12syb.pdf>.
23. The relationship between release from custody and representation by counsel is complex. For example, the fact that some immigrants are subject to mandatory detention limits the pool of individuals that are initially granted custody hearings. *But* see *Rodriguez v. Robbins*, 715 F.3d 1127, 1138 (9th Cir. 2013) (finding that immigrants held beyond six months must receive individualized bond hearings to justify continued detention), cert. granted (June 20, 2016) (No. 15-1204), accessed September 21, 2016, <https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/15-1204.htm>. In addition, immigrants may be released by detention officers without ever having an adversarial custody hearing before a judge with counsel present. Among those immigrants in this study’s sample who were released, only 37 percent had a custody hearing before an immigration judge, demonstrating that their release was not based on a court order. For additional discussion of factors that could influence release from detention, see Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 71-72. See also Emily Ryo, “Detained: A Study of Immigration Bond Hearings,” *Law & Society Review* 50, no. 1 (2016): 117-53 (finding that immigration judges were significantly more likely to grant bond to long-term detainees who had counsel, as compared to similarly situated detainees who appeared without counsel at their custody hearing).
24. H.R. Rep. No. 113-91, at 40 (2013). See generally Doris Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: Migration Policy Institute, 2013), accessed July 25, 2016, <http://www.migrationpolicy.org/sites/default/files/publications/enforcementpillars.pdf> (tracking the tremendous increase in federal spending on immigration enforcement).
25. U.S. Department of Homeland Security, Congressional Budget Justification, “FY2017 Vol. II,” (2016), accessed July 25, 2016, [https://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202\\_1.pdf](https://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202_1.pdf).
26. A study by NERA Economic Consulting found that providing counsel for detainees would “more than pay for itself in terms of fiscal cost savings.” Dr. John D. Montgomery, NERA Econ. Consulting, “Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings,” May 28, 2014: 35, accessed July 25, 2016, [http://www.nera.com/content/dam/nera/publications/archive2/NERA\\_Immigration\\_Report\\_5.28.2014.pdf](http://www.nera.com/content/dam/nera/publications/archive2/NERA_Immigration_Report_5.28.2014.pdf).
27. Eagly and Shafer, “A National Study of Access to Counsel in Immigration Court,” 74.
28. A noncitizen in removal proceedings may also apply for permission to leave the United States “voluntarily” instead of by order of the immigration judge. Immigrants who obtain voluntary departure generally pay for the return trip in exchange for being able to avoid some of the bars to future lawful admission. I.N.A. § 240B (permitting a noncitizen to leave the United States voluntarily instead of being found deportable). Given that respondents granted voluntary departure must leave the country, this report does not refer to voluntary departure as a form of relief. Instead, in this report individuals granted voluntary departure are counted as having been ordered removed. See Eagly and Shafer, “A National