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Evaluation of the New York Immigrant Family Unity Project:

Assessing the Impact of Legal Representation on Family and
Community Unity

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Director's Note

The mission of the Vera Institute of Justice (Vera) is to drive change, to urgently build and improve justice systems that ensure fairness, promote safety, and strengthen communities. To achieve that mission, Vera works with others who share our vision to tackle the most pressing injustices of our day—from the causes and consequences of mass incarceration, racial disparities, and the loss of public trust in law enforcement, to the unmet needs of the vulnerable, the marginalized, and those harmed by crime and violence. Since its inception in 2005, Vera's Center on Immigration and Justice has particularly focused on increasing access to legal information and representation for non-citizens facing deportation, who are among our society's most vulnerable and marginalized people. Among those facing deportation, those who are detained are especially vulnerable and marginalized. The New York Immigrant Family Unity Project (NYIFUP) and this evaluation are a culmination of many years of efforts by many former and current staff in the Center on Immigration and Justice. While Vera has been an important player in the creation and success of NYIFUP, this project was the product of many organizations, officials, and individuals working tirelessly and selflessly over many years to realize the vision of providing due process, justice, and a fighting chance to detained non-citizens, first in New York and, eventually, based on the NYIFUP model, nationwide.

In considering deportation cases that came before him on appeal, Robert Katzmann, chief judge of the U. S. Court of Appeals for the Second Circuit, saw injustice and responded. He spoke out, mobilized hundreds who shared his concerns, and catalyzed efforts that led not only to NYIFUP but also to the Immigrant Justice Corps, which funds and trains young lawyers to become effective legal advocates for immigrants.

A committee—ultimately of 18 concerned lawyers

and immigration judges—drawn from Judge Katzmann's Study Group on Immigrant Representation, led to the drafting of the New York Immigrant Representation Study. The study quantified the scale and nature of the barrier to representation and created the blueprint for what became NYIFUP. The study made clear that many of those who were being ordered deported had valid bases to lawfully remain in the United States but, without representation, were being unjustly deported.

Armed with the findings and recommendations of the New York Immigrant Representation Study, the Immigration Justice Clinic of Cardozo School of Law, the Northern Manhattan Coalition for Immigrant Rights, the Center for Popular Democracy, Make the Road New York, and Vera joined together as the NYIFUP Coalition seeking to make the nation's first public defender project for detained non-citizens a reality. After extensive efforts, the coalition in 2013 won the support of the New York City Council for a pilot at the Varick Street Immigration Court (Varick Street).

Understanding the importance of the effort and seeing from the pilot that NYIFUP worked, the council, led by Speaker Melissa Mark-Viverito and council members Carlos Menchaca, Julissa Ferreras-Copeland, and Daniel Dromm, in 2014 fully funded NYIFUP at Varick Street. From 2014 to the present, the council has unwaveringly supported NYIFUP and its provision of due process to immigrant New Yorkers. Speaker Mark-Viverito, without whom NYIFUP would not exist, provided the following reflections on the project:

For years many New Yorkers in immigration detention were unable to secure legal assessment and representation early enough in their deportation case to assert claims for relief. Four years ago the council funded a pilot program that provides every low income, detained immigrant in deportation proceedings access to high quality legal representation. That program, the New York

Immigrant Family Unity Project, now serves as a national model and has brought quality legal services to hundreds of immigrants and their families in New York City—often resulting in grants of relief that likely would not have been obtained without a lawyer. As we face the very real threat of mass deportations, NYIFUP, and programs like it, are vital if we are to uphold the rule of law and due process in our country. I am proud to say that we are committed to continuing NYIFUP in New York City and to sharing our experience implementing this successful model with cities and states that share our values and goals.

As this evaluation establishes, NYIFUP is achieving a 48 percent successful outcome rate. The 1,100 percent increase in successful outcomes, as compared to the success rate for unrepresented individuals at Varick Street pre-NYIFUP, is a credit to the skillful lawyering and dedication of the attorneys for the three NYIFUP providers at Varick Street: Brooklyn Defender Services, The Bronx Defenders, and the Legal Aid Society. For every 12 cases NYIFUP wins at Varick Street, 11 of those non-citizens would have been ripped from their families and communities prior to NYIFUP.

As this evaluation was completed in June 2017, based on the leadership of the Independent Democratic Conference of the New York State Senate and Governor Andrew Cuomo, NYIFUP is expanding to serve all detained non-citizens facing deportation in New York State outside of New York City. NYIFUP has also inspired more than a dozen jurisdictions around the country to create government-funded deportation defense projects. At least a dozen more localities are considering establishing projects to protect their immigrants from unjust deportation. We believe that this evaluation provides evidence to support the proposition that justice and fairness demand that every indigent non-citizen in the nation facing deportation receive a government-funded attorney.



Oren Root
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Executive Summary

This study evaluates the impact of the New York Immigrant Family Unity Project (NYIFUP). Since November 2013, NYIFUP has pioneered universal representation for detained indigent immigrants in deportation proceedings at the Varick Street Immigration Court (Varick Street) who were unrepresented at their initial hearing. Deportation cases are the only legal proceedings in the United States in which people are routinely detained by the federal government and are required to litigate for their liberty against trained government attorneys without the assistance of counsel. Nationally, only the detained non-citizens who are able to afford private attorneys are generally able to secure representation, while most low-income detained persons appear in immigration court unrepresented. Yet without an attorney, individuals are rarely able to effectively navigate the immigration legal system. Before NYIFUP, only 4 percent of unrepresented, detained cases at Varick Street resulted in successful outcomes that allowed non-citizens to remain in the United States. The New York City Council funded NYIFUP to level the playing field and bridge these gaps.

Employing quantitative analyses of administrative and program data, the Vera Institute of Justice (Vera) studied the impact of NYIFUP on case outcomes by comparing NYIFUP cases to other, similarly situated cases. Drawing also on extensive stakeholder and client interviews, Vera's key evaluation findings include the following:

- › **NYIFUP clients have strong ties to New York and the United States.** On average, NYIFUP clients had been living in the United States for 16 years by the time they entered deportation proceedings. NYIFUP clients were the parents to 1,859 children living in the United States, 86 percent with legal status, mainly citizenship. These strong ties demonstrate the community's stake in these proceedings and impact immigration court outcomes. Forty-one percent of NYIFUP clients entered or resided in the United States legally, 30 percent as lawful permanent residents (LPRs).
- › **NYIFUP has significantly improved the chances that low-income non-citizens will receive successful immigration**

court outcomes permitting them to remain in the United States legally. Analyzing the cases already completed and using advanced statistical modeling that indicates the likely outcomes of pending cases, Vera has estimated that 48 percent of cases will end successfully for NYIFUP clients. This is a 1,100 percent increase from the observed 4 percent success rate for unrepresented cases at Varick Street before NYIFUP.

- > **NYIFUP has met its goal of preserving family unity.** In addition to helping more immigrants win favorable outcomes that allow them to remain in the United States, NYIFUP clients obtain bond and are released from detention at close to double the rate of similarly situated unrepresented individuals at comparable courts (49 percent for NYIFUP versus 25 percent for unrepresented individuals at similar courts). NYIFUP has reunified more than 750 individuals with their families.
- > **Universal representation through the NYIFUP model improves fairness and the administration of justice.** The high rates of successful outcomes and releases into the community resulted, at least in part, from high levels of activity by the NYIFUP legal teams in immigration court, on appeal, and in collateral proceedings. While it took, on average, longer for NYIFUP cases to achieve successful outcomes than was true for unrepresented cases, the Varick Street court ran more smoothly and efficiently with lawyers present for virtually all non-citizens facing deportation.
- > **The success rate of NYIFUP cases has helped hundreds of New Yorkers gain or maintain legal work authorization, thus contributing to federal, state, and local tax revenue.** NYIFUP is estimated to have helped more than 400 New Yorkers gain or maintain work authorization by winning their immigration cases. Overall, these successful outcomes are projected to produce tax revenue from this cohort of NYIFUP clients of \$2.7 million each and every year, for years to come. The annual increase in tax revenue will be compounded significantly with the addition of each new cohort of NYIFUP clients.

Introduction

NYIFUP is the nation's first public defender system for immigrants facing deportation, defined as those in removal proceedings before an immigration judge. The program is funded by the New York City Council and since July 2014 has provided a free attorney to almost all detained indigent immigrants facing deportation at Varick Street who are unrepresented at their first court appearances.¹ (In New York City, cases of detained immigrants are heard at the Varick Street location, while non-detained cases are heard at 26 Federal Plaza). Deportation proceedings are considered civil—not criminal—and thus the constitutional guarantee of the right to counsel under the Sixth Amendment has not been applied to immigrants facing deportation. As a result, removal proceedings are the only legal proceedings in the United States where people are detained by the federal government and required to litigate for their liberty against trained government attorneys without any assistance of counsel. NYIFUP is New York City's response to this gap in representation. This evaluation offers quantitative and qualitative analysis about the impact of government-funded counsel in New York City deportation proceedings on clients, their families, and the local economy.

Thirty-five percent of detained immigrants nationwide have attorneys representing them in their deportation cases.² Robert Katzmann, chief judge of the U.S. Court of Appeals for the Second Circuit—among many others, including community advocates—has shined a light on the plight of the majority of detained immigrants, who are unrepresented. This focus has catalyzed a groundswell of study and innovation.³

Nature and scale of the lack of representation in immigration court

To understand the impact of counsel on deportation proceedings, it is first necessary to understand the nature of deportation proceedings, the scale of the unrepresented population in immigration court, and the legal framework related to access to counsel. The federal government uses deportation proceedings before the nation's immigration courts as the

primary mechanism to effect the deportation of non-citizens living in the United States as well as for people arriving at its borders who establish a credible fear of persecution.⁴ A popular perception is that deportation is a consequence reserved for people who entered the United States unlawfully. In reality, any non-citizen, including long-term lawful permanent residents (LPRs, or green card holders), refugees, and people who entered legally on visas can be placed in deportation proceedings. Immigration officers in U.S. Immigration and Customs Enforcement (ICE) initiate the proceedings by filing a charging document, called a Notice to Appear (NTA).⁵ This document sets forth what are known as removal charges. The most common charges involve allegations that a person entered the country unlawfully, overstayed a visa or, in the case of green card holders, has been convicted of a crime. Crimes as minor as turnstile jumping, selling counterfeit t-shirts on the street, or non-criminal possession of small amounts of marijuana can trigger deportation, even if the crimes occurred decades ago.⁶

At the outset of deportation proceedings, immigration officers make an initial determination whether to detain individuals while their cases are pending. Because of a 1996 law, however, many immigrants are subject to “mandatory detention”—meaning no judge has the authority to release them, even if they pose no danger to the community and are not a flight risk.⁷ As a result, each year, hundreds of thousands of immigrants need to defend themselves from deportation while detained.⁸

In recent years, the number of new removal cases in immigration court has fluctuated between approximately 190,000 and 227,000 annually.⁹ Consistent with recent efforts by immigration advocates and federal, state, and local governments to expand access to counsel for immigrants, the U.S. Department of Justice, Executive Office for Immigration Review (EOIR, the immigration court agency) reports a steady increase in the percentage of these immigrants who were able to secure counsel in their deportation proceedings over the last several years—with 50 percent of detained and non-detained immigrants represented in fiscal year 2012, rising to 61 percent in fiscal year 2016.¹⁰ Notwithstanding this increase, the raw number of unrepresented immigrants facing deportation in recent years is at historic highs, with more immigrants deported between 2000 and 2015 than were deported in the entire 150 years prior.¹¹ A consistent body of independent research, and the EOIR dataset used in this study, demonstrate that the lack of representation in deportation proceedings is felt most acutely by detained immigrants.¹²

The obstacles facing unrepresented immigrants, and detained immigrants in particular, are substantial. Immigration law is among the most complex areas of American law and has been described by federal

courts as “labyrinthine.”¹³ The threshold question of whether the removal charge should be sustained is sometimes relatively straightforward for people charged with entering unlawfully or overstaying a visa. It is more difficult to determine removability for LPRs. The interplay between state criminal law and federal immigration law is complex, and it is often very difficult to discern whether a green card holder is deportable at all. Moreover, because of complicated laws which grant citizenship automatically to certain individuals who are not born in the United States, it can sometimes be very difficult to even determine whether or not someone is a citizen.¹⁴ As a result, every year, United States citizens are detained without counsel—one report cited more than 20,000 such instances between 2003 and 2010. In some cases, U.S. citizens have even been deported.¹⁵

Moreover, even if the initial removal charge is sustained, there are a host of defenses (known as “forms of relief”) that are available to non-citizens in certain situations and can spare them from deportation. Forms of relief vary widely—from asylum to special protections for juveniles, crime victims, victims of domestic violence, and long-term green card holders, among others. Identifying and establishing eligibility usually requires complex legal and factual analysis. The burden of showing eligibility for relief is on the non-citizen. In addition, even when an immigrant is eligible to remain in the United States, virtually all forms of relief require full trials (known in immigration court as “individual hearings”) for the court to determine whether, as a matter of discretion, the individual warrants protection against deportation. Accordingly, unrepresented detained indigent non-citizens struggle to defend themselves against the trained government immigration lawyers who prosecute these cases.

The unique constitutional protections applied in criminal proceedings, such as the Sixth Amendment’s right to counsel, are not generally extended to deportation proceedings, so the right to government-funded defense counsel does not apply.¹⁶ The Supreme Court has been clear regarding the gravity of the liberty interest at stake for immigrants facing removal, characterizing deportation as a “drastic measure.”¹⁷ In an op-ed published in 2014, Immigration Judge Dana Leigh Marks of San Francisco remarked that an immigration case “often involves life and death consequences [that] amount to death penalty cases heard in traffic court settings.”¹⁸ The Supreme Court has recognized that all immigrants are entitled to due process in removal proceedings.¹⁹ Nevertheless, the Court has yet to rule that due process requires the appointment of counsel. The immigration laws likewise recognize that, while immigrants are entitled to counsel of their choosing, the federal government is not obligated to

pay for such counsel.²⁰ In recent years, courts have ruled that, in at least some circumstances, the law can require the appointment of counsel at government expense. For example, detainees with mental disabilities who are determined by an immigration judge to be incompetent to represent themselves in deportation proceedings are now entitled to appointed counsel.²¹ Nevertheless, for the vast majority of immigrants facing deportation, including children, federal law provides no clear path to a right to appointed counsel.

Implementation of NYIFUP

NYIFUP began as a pilot funded to handle 190 cases that were accepted for representation between November 2013 and April 2014. From July 2014 to June 2016 (the conclusion of the evaluation period), almost every otherwise-unrepresented detained immigrant whose deportation proceedings began at Varick Street and whose household income did not exceed 200 percent of the federal poverty guidelines has received a NYIFUP lawyer. The program has, thus far, been funded by the New York City Council, with \$10 million in the current budget. From the program's inception through June 30, 2016, NYIFUP attorneys have represented 1,772 individuals.²²

The concept for a publicly funded universal deportation defense system for detained immigrants grew out of the work of the Study Group on Immigrant Representation convened by then-judge and currently Chief Judge Robert Katzmann of the U. S. Court of Appeals for the Second Circuit. In 2011, the study group launched the New York Immigrant Representation Study, which documented the depth of the immigration representation crisis in New York and identified detained immigrants in particular as the group with the greatest need.²³ The study demonstrated that two-thirds of detained immigrants in New York State were unrepresented and that unrepresented detained immigrants had only a 3 percent chance of succeeding in their removal proceedings. Focused on this problem, in the second year of the study a steering committee of experts from the immigration bench and the bar developed an evidence-based proposal for a government-funded universal deportation defense system for detained immigrants.²⁴ This became the blueprint for NYIFUP.

After the study was published, five organizations—The Center for Popular Democracy, the Immigration Justice Clinic at Cardozo School of Law, Make the Road New York, the Northern Manhattan Coalition for Immigrant Rights, and Vera—came together to form the NYIFUP Coalition and advocate for the creation of NYIFUP. The NYIFUP pilot was launched with funding from the New York City Council in 2013.

Through a competitive bidding process, the Coalition selected at first two—and then three—service providers to deliver representation through NYIFUP: The Bronx Defenders, Brooklyn Defender Services, and the Legal Aid Society (collectively the “NYIFUP providers”). In addition, Vera was funded by the city to help establish and monitor the program in its first year. Vera and the NYIFUP providers worked with ICE’s Office of Chief Counsel, which prosecutes deportation cases; ICE’s Enforcement and Removal Operations, which detains immigrants; and EOIR to establish procedures and systems for the efficient and effective administration of NYIFUP.

Pursuant to those procedures and systems, the NYIFUP providers staff all days when detained immigrants first appear before an immigration judge (known as initial “master calendar” days) at Varick Street, much the same way public defenders staff arraignments in criminal court in New York City. In advance of the day’s initial master calendar hearings, NYIFUP attorneys provide a brief orientation presentation to all unrepresented individuals scheduled to appear that day and meet individually with each potential client to screen for financial eligibility. If an individual is eligible and wants representation from NYIFUP, the NYIFUP attorney then conducts an initial evaluation of the merits of the case and explains the options available to the individual. NYIFUP attorneys then formally assume representation before the court at the afternoon initial master calendar hearing.

NYIFUP attorneys continue representation through the completion of the deportation proceedings before the immigration courts and any appeals to the Board of Immigration Appeals (BIA). Although the individual must be detained for representation under NYIFUP to begin, the providers continue this representation if the client is released from custody. For individuals who have no viable defense to deportation, the case may conclude quickly at the first or second appearance if the client accepts an order of deportation or agrees to voluntary departure. For most other cases, attorneys must draft legal briefs and/or conduct significant factual investigations to make applications for relief.

NYIFUP attorneys also provide representation in bond proceedings, which seek the client’s release. In addition, NYIFUP attorneys routinely handle a host of collateral legal proceedings that impact the deportation case. Such proceedings can include family court proceedings for individuals pursuing special immigrant juvenile status, federal habeas corpus actions for individuals wrongfully detained, and post-conviction motions for individuals with defective criminal convictions. NYIFUP providers use a holistic approach to legal services, meaning that the staff is augmented by team members with different specialties, which may

include social workers, mental health professionals, investigators, and other support staff. Holistic legal services provide the client with trained professionals in dealing with trauma, for example, who are able to uncover more information about the clients' lives and circumstances and aid the legal case, which may in fact be dependent on conveying that traumatic experience to the court.²⁵

Evaluation of NYIFUP

In the last several years there has been a series of efforts to study the impact of counsel in deportation proceedings.²⁶ Though the magnitude of the results vary, these studies have universally and not surprisingly shown that represented immigrants fare substantially better than unrepresented immigrants in a variety of ways, including experiencing higher rates of release from detention on bond and improved legal outcomes. This means, primarily, that immigrants with a legal right to remain in the United States are significantly more likely to vindicate that right with the aid of counsel. A previous study by NERA Economic Consulting also endeavored to quantify the collateral cost savings that an assigned counsel program would deliver.²⁷

All prior studies of representation in deportation proceedings, however, have been limited by selection bias, despite various attempts to control for this. Selection bias occurs when the population being studied is not representative of the larger population. In studies of representation, the population being studied (immigrants in deportation proceedings with lawyers) is not representative of the larger population (all immigrants in deportation proceedings) because lawyers likely choose to accept cases based on the presumed strength of the case. This means that the cohort of represented cases is qualitatively different than the cohort of unrepresented cases. This bias makes it difficult to produce a sound estimate of the impact of representation on a case. NYIFUP, however, as a universal representation program, accepts all individuals without any evaluation of the strength of their legal claims, thus eliminating issues of selection bias. Accordingly, a study of NYIFUP can draw conclusions about the impact of counsel with far more confidence than any prior study.

The following pages present the evidence gathered from the evaluation of NYIFUP. The scope of the study includes quantitative and qualitative assessments of the ways in which universal representation, through NYIFUP, affects individuals served by the program. The evaluation also includes analysis of the residual impacts of the program on families and communities. Specifically, this evaluation seeks to answer the following research questions:

- › Who is served by NYIFUP and what community ties do they have?
- › What type of activities do NYIFUP staff undertake as a part of their defense of their clients?
- › To what extent do legal case outcomes differ for NYIFUP clients compared to individuals with no representation?
- › Is there a difference in rates of release from detention facilities (through bond or a successful case outcome) for NYIFUP clients compared to individuals with no representation?
- › Is there a difference in the length of cases for NYIFUP clients compared to individuals with no representation?
- › To what extent does NYIFUP influence tax revenue generated to federal, state, and local government, specifically through gained work authorization for certain clients?

Data sources and analysis

To establish a comprehensive perspective on the impact of NYIFUP, Vera gathered data from a variety of sources. The use of multiple data sources allows for triangulation, or corroboration, of findings and generates a richer dataset than any one source could offer on its own. For this evaluation, Vera utilized the following data sources:

Program data:

- › The NYIFUP Client Database (hereafter “program data”), which the providers used to track detailed information about each individual represented by the program and their legal case. The data collected through this database is more detailed than what is typically available through other administrative datasets, including information about individuals’ families and employment, along with specific information about case activity and collateral proceedings. The data was provided to Vera as part of an agreement between Vera and the providers. It includes all individuals represented by the program between November 1, 2013 and June 30, 2016.²⁸

Administrative data:

- › The U.S. Department of Justice, Executive Office for Immigration Review, Office of Planning, Analysis & Technology’s CASE database (hereafter “EOIR data”), which is used to track information about all cases in immigration court. The data includes information

relating to the court, such as hearing dates, applications filed, bond information, case outcomes, and more. This dataset includes all individuals with an initial master calendar hearing between July 1, 2010 and June 30, 2016 in all U.S. immigration courts.

Datasets compiled by other researchers:

- › Additionally, Vera used publicly available data from Syracuse University's Transactional Records Access Clearinghouse (TRAC) Immigration website on historical asylum rates for the statistical model in the study. This dataset is compiled by TRAC through a standing FOIA request.²⁹

Finally, Vera's research team conducted a series of interviews and focus groups between August 2016 and April 2017 to gather qualitative data that could further augment and contextualize the administrative data.³⁰ This qualitative data included:

- › Seventeen NYIFUP client or family member interviews, including 13 male and two female clients (a distribution similar to the general NYIFUP population), one client's husband, and another client's father. Interview participants were recruited, with their informed consent, by NYIFUP attorneys. Interviews were conducted independently by Vera in the clients' preferred language (either Spanish or English). To account for a range of experiences and viewpoints in the sample, individuals with varying legal outcomes were asked to participate. At the time of the interviews, two of the 17 participants were in detention with pending cases (12 percent), seven had been released from detention on bond while awaiting outcomes of their cases (41 percent), four had already been granted the ability to remain in the United States (24 percent), two were ordered removed and were interviewed telephonically following removal (12 percent), and two were family members of clients who had been ordered removed (12 percent). These interviews focused on the challenges of being detained, experiences with the immigration court process and representation, and the impact of any outcomes by the time of the interviews. All clients referenced throughout the report have been given pseudonyms to protect their identities.
- › Five focus groups, each with multiple NYIFUP managers, attorneys, paralegals, and staff for a total of over 40 participants. Vera held separate focus groups for program managers and staff attorneys to

increase comfort and encourage honesty during the discussions. The manager focus groups discussed universal representation programs generally, the kinds of cases NYIFUP attorneys were representing, and program implementation and operations. The attorney focus groups discussed working with NYIFUP, the impact of NYIFUP on the court, attorneys' perspectives on the program, and observations about the impact of NYIFUP on individuals, families, and communities.

- › Six stakeholder interviews. These interviews were conducted with ICE's Deputy Chief Counsel at Varick Street, Khalilah Taylor; New York State Assembly Member Marcos Crespo; and three retired immigration judges, Robert Weisel, Sarah Burr, and Alan Page.³¹ Each of these stakeholders consented to be named in this report. Stakeholder interviews focused on the implications of a universal representation model, the effect of NYIFUP on court proceedings, and the strength of legal arguments by NYIFUP attorneys.
- › In addition, Vera received commentary on the program from New York City Council Speaker Melissa Mark-Viverito, Chief Judge Robert Katzmann, and Steven Banks, Commissioner of the New York City Human Resources Administration.

Analytical strategies employed

The evaluation of NYIFUP incorporated several analytical strategies to fully explore the impact of the program. They include:

- › descriptive statistics about deportation proceedings across different populations: NYIFUP, unrepresented cases at similarly situated courts, national cases, and unrepresented cases at Varick Street before NYIFUP;
- › logistical regression to isolate the impact of NYIFUP on case outcomes while controlling for demographic, situational, and environmental factors that influence the outcome; and
- › analysis of qualitative data to identify and understand themes and narratives present across different situations.

Methodological limitations in the evaluation of NYIFUP

The evaluation of NYIFUP presented several challenges that Vera's research team worked to address. All details of the methods used in this evaluation

are in the Methodological Appendix at www.vera.org/nyifup-evaluation-methodology. The key limitations to these methods are described below.

First, there are several limitations regarding the administrative data that were considered in designing the study. As with most datasets designed for program management rather than research purposes, a small degree of missing, inaccurate, or incomplete data entry is to be expected.³² To protect against these sorts of data inconsistencies to the extent possible, Vera conducted several quality checks of the data, including running comparisons between the statistics gleaned from immigration court data and similar figures as reported by the NYIFUP providers, including, but not limited to demographic statistics (such as country of birth, age at time of apprehension, and legal status) and case statistics (such as case outcome and number of days from first master calendar hearing to disposition). Ultimately, any identified data inconsistencies were not believed to substantially influence the research findings.

Further, as is discussed in the Methodological Appendix, while Vera was able to identify a large percentage of all NYIFUP cases in the EOIR data (88 percent), there were still 221 cases that could not be matched with certainty and thus are excluded from any analyses which rely on EOIR data. It does not appear there are any consistent patterns that would suggest a certain subset of cases could not be matched; rather, this is likely due to differences in information reported to or recorded by attorneys and federal agencies. Data from these 221 cases are nonetheless included in findings that rely entirely on program data, such as statistics about client demographics and their families.

Lastly, the majority of the immigration court statistics presented in this report—such as case outcomes, case completion times, and related measures—can only be reported for completed cases. Although Vera estimates the outcomes for the pending cases, the descriptive statistics only include the cases that have completed as of June 30, 2016. The notes underneath the tables throughout the report clearly label the situations in which this applies. Cases in immigration court can take several months to multiple years to complete, particularly once an individual is released from detention. For example, according to TRAC, the average case that completed in federal fiscal year 2016 took 233 days at Varick Street and 958 days at 26 Federal Plaza. Accordingly, large numbers of cases remain pending, including 45 percent of all NYIFUP cases. Findings that rely on completed cases are therefore skewed towards the types of cases that resolve more quickly, such as those resulting in deportation.³³

Chapter I: The impact of universal representation on individuals

This chapter describes the extent to which NYIFUP has alleviated difficulties associated with representing oneself in deportation proceedings. As detailed below, represented individuals achieve significantly better legal outcomes and receive greater due process compared to unrepresented individuals.

Population served by NYIFUP

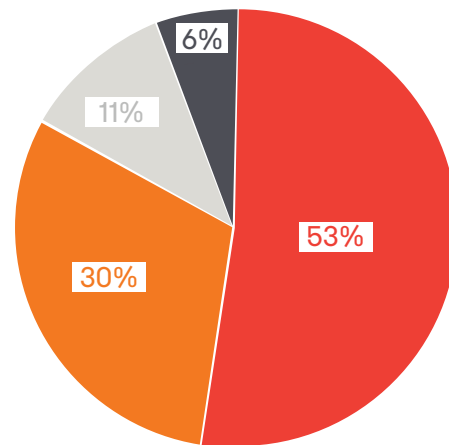
From the launch of NYIFUP through June 30, 2016, the program has matched 1,772 indigent individuals with free legal representation, providing robust access to due process and the benefits or relief for which they may be statutorily eligible. By the end of New York City's fiscal year 2015—the first full year of NYIFUP—more than 95 percent of non-citizens whose immigration court cases began on the Varick Street “detained” docket were represented, with the majority represented by NYIFUP attorneys.³⁴ These numbers are evidence of both the need for the program and its success in meeting the goal of achieving universal representation in New York City. The high participation rate illustrates that many individuals in immigration removal proceedings live in low-income households whose combined income falls below 200 percent of the federal poverty rate, a mere \$23,340 per year (or \$1,945 a month) for a single-person household in 2014. Notably, the percentage of immigrants represented by private counsel remained relatively constant through the implementation of NYIFUP, actually increasing slightly after the program began. This indicates that the means testing used was successful and signifies that NYIFUP is in fact not displacing representation by the private bar of individuals who can afford an attorney.

Despite earning low wages, NYIFUP clients had high workforce participation rates, with 67 percent reporting a vocation and 64 percent employed at the time of intake, akin to the 63.5 percent workforce participation rate for New York State residents.³⁵ Further, employment rates for NYIFUP clients may be higher than reported, as clients who

work seasonally may not have been employed at the time of intake and clients without work authorization may be hesitant to report under-the-table employment. As will be discussed in Chapter III, immigrants form a critical part of New York’s workforce and economy. Thus, legal representation that helps avert unnecessary detentions and deportations also helps keep workers employed and contributing to the economy and, of course, their own households. While popular perceptions of persons in deportation proceedings often portray them as recent arrivals crossing the border without authorization and lacking ties to the local community, 41 percent of NYIFUP clients entered or resided in the United States legally, 30 percent as LPRs, as shown in Figure 1.

Figure 1
Legal status at intake

■ Entered without inspection ■ Legal permanent resident
■ Visa holder (Current or overstay) ■ Other status



Source: Program data.

Many have deep ties to the community, having lived in the United States for an average of 16 years at the time of their initial court hearings.³⁶ Some arrived at such a young age that New York was really the only home they had ever known. One NYIFUP client, Christian, came to the United States with his mother as a toddler:

As I started getting older—I was a teenager . . . I started looking for a job. I asked my mother where my birth certificate [was], my social security card, and turns out she didn’t have it . . . I know everything

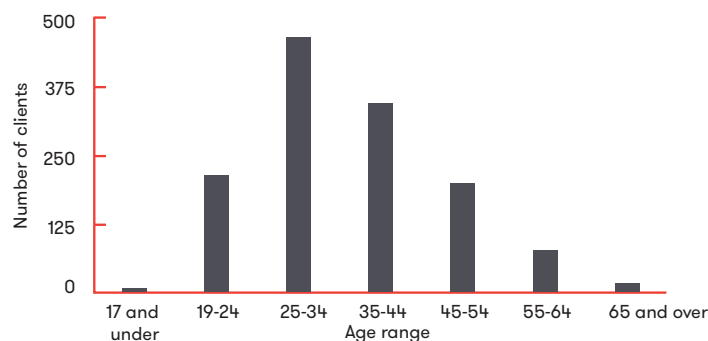
about America. My mind is America. It's the only country I've ever been to. I never went back [to my home country]. Basically all I know is New York City.

Several other NYIFUP clients recounted similar tales. There was Teresa, the grandmother of a U.S. citizen, and Diana, who had lived in the United States for more than 20 years after her father was murdered in her home country. Added Edgar, a married father of six, “I've been living here since I was 16 The majority of my family is here. I'm an immigrant but my family is all citizens.”

On average, NYIFUP clients had been living in the United States for 16 years by the time they entered deportation proceedings.

Despite having lived in the United States for an average of 16 years, many NYIFUP clients were still relatively young—evidence, perhaps, of the young age at which many migrated to the country. They were also mostly male (84 percent of all clients). Figure 2 below shows the ages of clients at the time of their initial master calendar hearing, where a combined 59 percent were between 25 and 44 years of age.

Figure 2
Age of client at first master calendar hearing



Source: Program data. Twenty-five percent of clients (N=444) were missing information regarding date of birth or date of initial master calendar hearing.

Consistent with their age cohorts nationally, 47 percent of NYIFUP clients had children living with them in the United States.³⁷ Table 1 below shows the number and the percentage of children who had legal status whose parents were represented by NYIFUP attorneys.

Table 1

Children of NYIFUP clients

Clients with children	Total number of children	Total children with legal status	Percent of children with status
840	1,859	1,607	86%

Source: Program data.

Clients who were parents had an average of two children, just like other families in the United States.³⁸ Eighty-six percent of their children had some form of legal status, primarily U.S. citizenship. Many clients were also married. Among the 37 percent of married NYIFUP participants, 61 percent had partners with legal status, also primarily citizenship. Thus, with the exception of their own legal status, NYIFUP clients resemble the typical American in many ways: they had the same workforce participation rates as New Yorkers statewide, had the same rates of parenthood, and matched the average number of children as the general U.S. population. For those clients who were parents, their children were almost always U.S. citizens. As Christian, the NYIFUP client introduced earlier, noted, “The only thing that separates me from an American citizen is what it says on my birth certificate.”

NYIFUP clients also reflect the diversity of New York City, representing nearly 100 nationalities and 36 languages. Consistent with the extended periods of time NYIFUP participants had resided in the United States, 31 percent listed English as their primary language, while another 60 percent spoke Spanish. Table 2 illustrates the nationalities of those individuals served by NYIFUP. A more comprehensive list of nationalities is available in the Appendix 1.2 of the Quantitative Methodological Appendix.

Although Mexicans comprise the largest foreign-born group in the United States and proportionally comprise the largest group in immigration proceedings nationally—as well as make up the plurality of NYIFUP clients—they are slightly underrepresented in New York immigration courts compared to national rates. Likewise, Dominicans constitute only 1 percent of those in deportation proceedings nationwide, but are overrepresented in New York City and in NYIFUP specifically (at 15 percent). For much of the past century, Dominicans have comprised the largest group of foreign-born Latinos in New York City, and have had

lower rates of naturalization than other eligible foreign-born persons.³⁹ Immigrants from the three Central American Northern Triangle countries (El Salvador, Guatemala, and Honduras) register in the top five nationalities for individuals in immigration court both for NYIFUP and nationwide, consistent with high volumes of migration from that region over the past few decades.⁴⁰

Table 2

Nationalities of NYIFUP clients

Nationality	Total cases	Percent
Mexico	306	17%
Dominican Republic	268	15%
Honduras	227	13%
Guatemala	175	10%
El Salvador	157	9%
Jamaica	130	7%
Ecuador	63	4%
Colombia	41	2%
Haiti	37	2%
Trinidad and Tobago	32	2%
Other countries/ no information	336	19%
Total	1,772	100%

Source: Program data.

The effect of universal representation on individuals' legal cases

Without an attorney, individuals are rarely able to effectively navigate the immigration legal system

As described previously, the U.S. immigration legal system is a complex system that does not guarantee the right to government-funded counsel. Unlike criminal proceedings, where upwards of 95 percent of cases resolve through guilty pleas, plea negotiations are not a significant feature of immigration practice. As a result, immigration cases in which an individual claims a right to remain in the United States almost universally require full litigation. In the absence of a universal representation program like NYIFUP, immigrants without the financial resources to hire an attorney would face the daunting task of

representing themselves against a trained lawyer arguing on behalf of the federal government. Many individuals in deportation proceedings have valid legal claims to remain in the United States, yet can rarely effectively litigate their cases *pro se* without the assistance of counsel. The lack of a legal representative therefore prevents those individuals from effectively exercising the rights afforded to them under the law.

NYIFUP was born out of a recognition of this issue. Martin, a NYIFUP client who moved to the United States when he was only two years old, explained the complexity of immigration law from his perspective: “The legal system is a different kind of comprehension. They use different kinds of words with legal definitions. So a regular word would not be a regular word when applied legally. So you don’t stand a chance without a lawyer.” Martin went on to describe the challenges he would have faced in the absence of NYIFUP:

If I wasn’t provided a lawyer, I couldn’t stand a chance. I didn’t know the law. Everybody in court needs a lawyer. To go in front of the court system without a lawyer, that’s like suicide, because the government counsel, they know the law . . . They know the cases ... they know the rules, they have the experience—I don’t. They know how to fight it, so there’s no way I could win the case.

Like Martin, the majority of individuals facing deportation—and indeed the public writ-large—lack the training, resources, or understanding to effectively identify and exercise their legal rights, particularly those which permit them to remain in the country. This is significant, given that the consequences of deportation can often be a matter of life or death. Recounted Carlos, another NYIFUP client, “[I]f it weren’t for my lawyer, then I wouldn’t be here today. I wouldn’t be alive in my country either.”

NYIFUP attorneys understand the importance of their work and the need to ensure fairness within the system. As one attorney explained while describing the purpose of the program:

We are making it fair for people—many of whom have grown up in this country, worked here, went to school here, have U.S. citizen kids, have paid their taxes. . . . They’ve been, for all practical purposes, like a citizen and it’s just that they never naturalized and now they’re getting a double punishment. . . . [We are] at least having some fairness where the laws are just so complicated that it would be impossible for people to adequately represent themselves.

As these individuals describe, the challenges of fighting deportation without an attorney are profound, yet are particularly acute for those in detention. As retired Immigration Judge Alan Page stated, “When you’re locked up, you’re in a much worse position than if you’re on the outside.” Detained individuals face an added layer of barriers by virtue of their custody status, and may experience substantial challenges completing the basic activities needed to develop a case. For example, individuals who have an asylum claim need to gather country conditions reports and other evidence from their home countries, such as police reports and family member affidavits, documents that cannot be easily gathered from the confines of a jail cell.

These difficulties are further compounded by the limited English proficiency of many people in deportation proceedings, including many of the NYIFUP clients. As retired Assistant Chief Immigration Judge Robert Weisel said:

When we talk about an immigrant population, we talk about a population that’s very vulnerable. Then you complicate that vulnerability by not being represented, not speaking English, [and] being detained. It’s an overwhelming theoretical unfairness.

For these individuals, having an attorney to coordinate activities related to the case is a significant determining factor in ensuring that the details of their cases are heard in court. Alex, a NYIFUP client and married father of two school-aged children, shared his experience: “Most of the information that [the NYIFUP attorney] get[s], I wouldn’t have the chance to get that information to provide to the judge.” He added, “So if I didn’t have a lawyer, I wouldn’t be here today. I would have been deported. I know I couldn’t fight that case by myself and win it, no way.” Retired Assistant Chief Immigration Judge Sarah Burr’s comments underscore this point: “It seems to me that in the United States of America, where people are locked up ... we as a country must be providing them with counsel. It’s a very, very basic right.” It is for this reason that NYIFUP focused its resources on representing people on the detained Varick Street docket.

This evaluation provides quantitative evidence that an unrepresented individual has a higher chance of being deported when compared to a similarly situated individual with representation. Qualitative evidence highlights the problem that unrepresented individuals do not understand the rights afforded to them or are unable to exercise those rights. The addition of a legal representative allows the facts of the legal case and the applicable law—and not simply the individual’s lack of a lawyer or custodial

status—to drive case outcomes. As shown in the following section, this results in significantly higher rates of success for represented individuals.

Represented individuals experience significantly more successful legal outcomes than those without representation

The presence of a lawyer is crucial for increasing individuals' abilities to exercise their rights, which in turn keeps families united when there is a valid legal claim to relief. As demonstrated in Table 3, an individual's representation status is strongly associated with legal case outcomes. A "successful outcome," here and throughout the evaluation, is defined as an immigration court outcome of legal relief,⁴¹ termination,⁴² or administrative closure.⁴³ These outcomes are considered successful from the client's point of view because the individual is permitted to remain in the United States. All other outcomes, such as an order of removal or voluntary departure, are considered "unsuccessful" because they require the individual to depart the United States.

Table 3

Success rates across the United States for cases beginning in detention (November 1, 2013 to June 30, 2016)

	National unrepresented		National represented	
	Number of cases	Percent	Number of cases	Percent
Unsuccessful outcome	68,367	94%	20,650	54%
Successful outcome	4,009	6%	17,868	46%
Total	72,376	100%	39,119	100%

Source: EOIR data. The numbers include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. The statistical significance of these findings was tested using a chi-squared test. The difference in success rate between "National unrepresented" and "National represented" is statistically significant ($p < 0.001$).

As this table demonstrates, unrepresented individuals whose cases begin while they are detained rarely achieve successful outcomes, with only 6 percent winning their cases. This is in stark contrast to the rate for represented individuals, who win 46 percent of the time.

In the years preceding NYIFUP, this trend of increased success rates for represented individuals was equally apparent at Varick Street and is a significant part of the reason for the creation of the program. These success rates are displayed in Table 4.

Table 4

Success rates for cases beginning at Varick Street Immigration Court, pre-NYIFUP (July 1, 2011 to November 1, 2013)

	Varick unrepresented		Varick represented	
	Number of cases	Percent	Number of cases	Percent
Unsuccessful outcome	2,121	96%	1,174	58%
Successful outcome	81	4%	862	42%
Total	2,202	100%	2,036	100%

Source: EOIR data. The numbers include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. The statistical significance of these findings was tested using a chi-squared test. The difference in success rate between “Varick unrepresented” and “Varick represented” is statistically significant ($p < 0.001$).

Like the nationwide numbers presented previously, the success rates for individuals at Varick Street in the years leading up to NYIFUP were strongly related to representation status. Unrepresented individuals achieved positive outcomes 4 percent of the time, compared to 42 percent for represented persons.

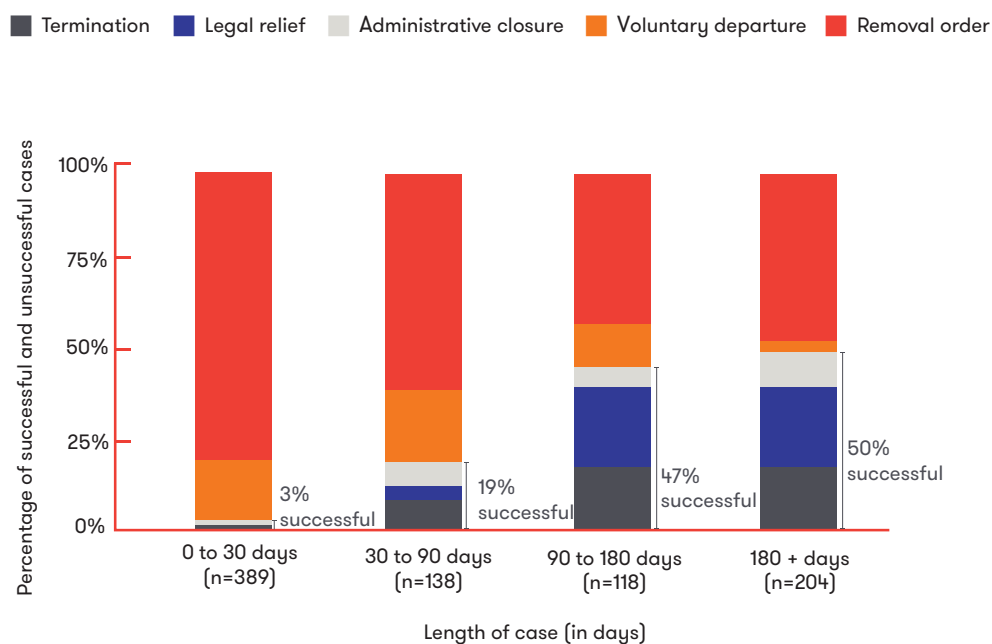
It should be noted that representation at Varick Street operated differently prior to NYIFUP and its implementation of universal representation. Before NYIFUP, legal representatives at Varick Street selected which cases to represent. This is commonly referred to as the “triage” model. Attorneys were able to select cases they perceived as more “winnable”—those with a higher likelihood of relief—or cases involving clients who appeared especially sympathetic. Further, characteristics of cases for individuals with the financial resources to hire a paid attorney were likely to differ from those of indigent individuals in ways that may correlate with case outcomes. For example, wealthier individuals may be more likely to obtain travel documents and be legally admitted into the country on a tourism or work visa, and may therefore be eligible for more forms of relief than individuals who enter without inspection while crossing the border. Thus, represented cases at Varick Street prior to NYIFUP, as well as the represented cases nationally—those selected under the triage model—are qualitatively different from those represented under NYIFUP, where the only criterion for representation was household income.

Vera estimates that 48 percent of NYIFUP cases will complete successfully, a 1,100-percent increase from the observed success rate for unrepresented cases at Varick Street before NYIFUP

By June 30, 2016, 839 NYIFUP cases had completed fully, 10 had initial dispositions but were awaiting a decision on appeal, and 681 remained pending. In order to assess the program's success rate, it is critical to understand the qualitative difference between the completed and pending cases. Figure 3 displays the outcomes for the NYIFUP cases that have concluded in immigration court, including the 10 awaiting appeal, by the length of the case (defined as the number of days from initial master calendar hearing to a decision by the immigration judge), and demonstrates that cases that ended in a successful outcome took a longer time period to conclude, while those that ended unsuccessfully were considerably shorter in duration.⁴⁴ The completed cases (being generally shorter in duration) therefore contain a disproportionate number of cases with unsuccessful outcomes. In contrast, the pending cases (being generally longer in duration) contain a disproportionate number of cases that will eventually resolve with successful outcomes.

Figure 3

Legal case outcomes for NYIFUP cases, by length of case



Source: EOIR data. The numbers include only completed cases, including those with pending appeal as of June 30, 2016. They do not include re-opened cases.

Indeed, only 3 percent of NYIFUP cases that ended within 30 days resulted in a successful outcome, compared to 50 percent of cases that concluded after 180 days or more. A similar trend has also been observed and tested with non-NYIFUP cases. This correlation between case duration and outcome is likely driven by two factors. First, in detained cases with no relief, it is in everyone's interest to complete the proceedings as quickly as possible with the immigrant accepting a deportation or voluntary departure order. In contrast, when people have viable claims, it takes time for cases to proceed to trial or to brief and decide a motion to terminate. Second, individuals with a higher likelihood of success are generally better candidates for release on bond and, once a person is released, cases take much longer because the detained court proceedings are expedited to reduce detention time and associated costs to the government.

Given this significant correlation between the length of a case and its legal outcome, the outcomes for NYIFUP cases that have already completed are only part of the story, as they contain a disproportionate number of cases with unsuccessful outcomes. Accordingly, Vera estimated the outcomes for the 681 pending cases based on the known case qualities, using the statistical model described later in this chapter.⁴⁵

Incorporating these estimates, Table 5 shows that NYIFUP is estimated to have successful outcomes for 48 percent of the cases accepted for representation between November 2013 and June 2016. This includes successful outcomes for 24 percent of the closed cases and 77 percent of the pending cases.

Table 5

NYIFUP success rates

	Outcomes of completed cases (Nov. 1, 2013 – June 30, 2016)	Outcomes of pending cases (projected)	Total
Unsuccessful outcome	636 (76%)	160 (23%)	796 (52%)
Successful outcome	203 (24%)	521 (77%)	724 (48%)
Total	839	681	1,520

Source: EOIR data and TRAC data. The outcome of completed cases include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. Ten NYIFUP cases have a pending appeal and are excluded from these numbers. This information comes from EOIR data. The outcomes of pending cases (projected) is generated from the statistical model which is presented in full in the Quantitative Methodological Appendix. The model data is produced from EOIR data and TRAC data.

Compared to the observed success rate for unrepresented cases at Varick Street before NYIFUP (4 percent) and the observed success rate for nationally unrepresented cases (6 percent), NYIFUP's 48 percent projected

success rate signifies a 1,100 percent increase and 700 percent increase in successful outcomes, respectively.⁴⁶

Significantly, 76 NYIFUP cases (9 percent of the 849 completed cases) resulted in termination, the immigration court equivalent to a case dismissal, meaning that the government's charges, as stated, were insufficient to justify deportation. Without the help of their NYIFUP attorneys, these 76 individuals likely would not have known that their charges were insufficient and would thus not have achieved the same positive case outcome.

Representation through NYIFUP increases individuals' chances of a successful legal outcome

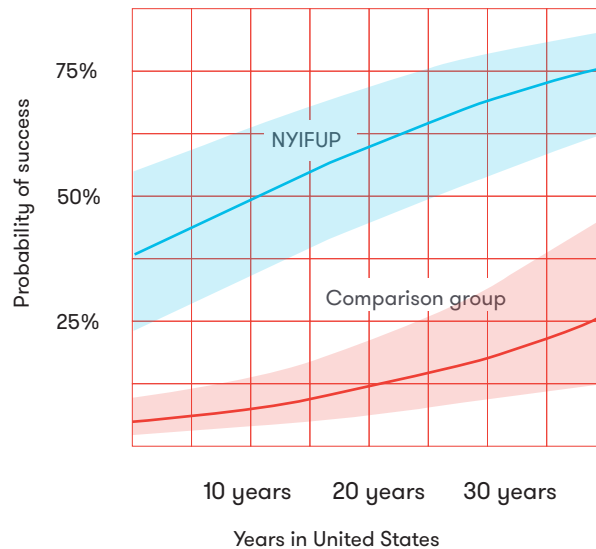
Since representation is only one of many factors that could influence case outcomes, it is necessary to use a more sophisticated technique than simple comparisons to measure the independent impact of representation on legal outcomes. To do so, Vera developed a statistical model (using logistical regression) to compare the success rate for NYIFUP cases to similarly situated, unrepresented cases at Varick Street and three other comparison courts: the detained dockets at Arlington, Boston, and Newark. Together, the unrepresented cases at these three courts plus Varick Street during the time of NYIFUP will hereafter be referred to as "the comparison courts." These comparison courts were selected because the respondent populations in these courts were most similar to the population in the Varick Street court.⁴⁷ NYIFUP cases are compared to similarly-situated cases without representation, because no representation, not private representation, is the more frequent option facing the individuals served by NYIFUP. As detailed in the Introduction at page 7, all of the individuals served by NYIFUP are below income levels set by the program design, making a private attorney option unfeasible for most.

The statistical model empirically tests whether representation itself was truly a causal factor predicting successful case outcomes by controlling for the influence of additional factors that may also affect outcomes. These include factors related to the forms of relief likely to be available, such as an individual's years in the United States since their most recent entry, the number and type of NTA charges, the individual's legal status (e.g., LPR), whether the person received bond (which is itself a proxy for other underlying factors, such as ties to the community), and the length of stay in detention prior to final disposition. The model also accounts for additional environmental factors that influence the probability of obtaining legal relief, such as the leniency of the judge (defined by the percent of asylum applications granted historically), the experience of the judge (defined by

total number of decisions made), the U.S. asylum grant rate toward the individual's country of birth, and the ICE field office that apprehended them. The statistical model holds each of these factors constant, isolating the unique impact of legal representation.

The logistic regression used to produce the predicted probability of successful outcomes passed a series of goodness of fit and reliability tests, providing confidence in the accuracy of the estimates.⁴⁸ The results of the model are graphically displayed in Figure 4, which shows the predicted probability of obtaining a successful outcome for people without representation at the comparison courts and for those who have a NYIFUP attorney. The horizontal axis demonstrates the number of years the person has been in the United States to illustrate how the impact of representation can vary across different circumstances. The bands surrounding each line represent the confidence intervals, meaning that there is 99 percent certainty that the true probability of receiving a successful outcome falls within each band.

Figure 4
Predicted probability of successful outcome, by length of time in United States



Source: EOIR data. The numbers include only and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016.

As illustrated by the gap between the lines for NYIFUP and unrepresented cases, the probability of a successful outcome is consistently higher with a NYIFUP attorney, and this difference is statistically significant. There is a direct, causal relationship between representation through NYIFUP and successful case outcomes. Notably, both groups—NYIFUP cases and those without representation—have a higher

probability of relief the longer they have been in the United States. This is unsurprising, given that certain lengths of time in the country are required for certain forms of relief, such as LPR cancellation of removal (seven year requirement) and non-LPR cancellation of removal (10 year requirement). Length of time in the United States is also likely related to additional factors that influence judges' discretion but are not measured in the EOIR data, such as the existence of U.S. citizen children, a history of paying taxes, and the ability to establish reasons why deportation would create extreme hardship for the individual's family.⁴⁹

Statistical evidence demonstrates that individuals have a substantially higher likelihood of a successful case outcome with a NYIFUP attorney compared to if they represent themselves.

The statistical model allows for a greater understanding of how the likelihood of success differs based on various individual and courtroom characteristics. The extent of the positive impact of NYIFUP representation varies according to case characteristics other than representation. Table 6 provides several examples of how the impact of representation differs across scenarios based on estimates produced in the model.

Table 6

Predicted probability of success based on representation status, by scenario

	NYIFUP predicted probability of success	Unrepresented predicted probability of success	Percent difference
Female	79%	20%	59%
Male, LPR	84%	27%	57%
Male, no aggravated felony charge	64%	11%	53%
Mexican male, under one year in United States, drug charge, in front of less lenient judge at Varick Street	19%	2%	17%

Source: EOIR data and TRAC data. The outcome of completed cases include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. All coefficients and significance of the variables included in the model are in the Quantitative Methodological Appendix. However, coefficients (log odds) from logistic regression are not easily interpreted. It is common practice to instead provide a series of predicted probabilities resulting from the model. In this table Vera presents the variables that were adjusted only. All others were held constant at their mean value or, when categorical, at their modal value.

As these predicted probabilities suggest, the characteristics and facts of the legal case itself and the context in which the case exists are also key determinants of legal outcomes, as one might expect. In other words, legal representation undoubtedly improves outcomes for individuals whose circumstances allow them to make valid legal claims to remain in the United States.

The effect of universal representation on individuals receiving due process

Representation improves fairness and the administration of justice in immigration court

The influence of a legal representative goes beyond success rates to ensuring that fundamental fairness is achieved in immigration proceedings. As discussed previously, the immigration legal system involves a complicated patchwork of laws, including laws that extend rights of due process to all individuals regardless of their claims to legal relief. For some, the law will permit them to legally remain with their families in the United States. Others may find that they have no legal recourse to remain in the country, yet are still legally entitled to due process under the U.S. Constitution.⁵⁰ A just court system is one in which due process is afforded to all immigrants, where individuals can exercise the right to pursue their cases within the confines of the law. Without representation, non-citizens often lack the legal expertise to understand both their legal rights and the mechanisms used to exert those rights. As Immigration Judge Burr stated:

In order to have due process, you have to have representation of all of the parties before a judge. . . . The fact is that the Constitution guarantees all people due process and equal protection.

Judge Burr observed that in fact the most “significant part of [NYIFUP’s impact] is that it provides due process.” She explained:

What you have now because of NYIFUP is a more traditional court setup. You have lawyers for anybody who [qualifies for the program]. You have the government attorney, who was always there. And you have the judge in the middle ... [T]hat basically embodies due process.

One NYIFUP attorney made a similar point, succinctly summarizing a sentiment repeated by many of the legal professionals Vera interviewed: “This is what a fundamentally fair hearing looks like—it has lawyers in it. The case law is that the government has to provide people with a fundamentally fair hearing.” Immigration Judge Page concurred, noting, “From the court’s point of view, I want to be able to say, regardless of the decision I reached, that both sides had a fair hearing.” As such, he continued, “NYIFUP is a crucial player in the delivery of justice.”

Representation is a key component in the safeguarding of due process throughout the legal case. Within the context of universal representation, the presence of NYIFUP attorneys helps to guarantee fairness and balance in the immigration court system—even if the case ultimately results in deportation.

NYIFUP attorneys achieve this due process in various ways, including through the use of motions and applications—the procedural mechanisms used by parties in immigration court to request that the immigration judge make a determination on legal and factual issues being raised before the court. According to EOIR data, NYIFUP attorneys recorded a high level of activity in their cases, including 587 motions (filing motions in 28 percent of cases) and 1,219 applications for relief (filing applications in 36 percent of cases) through June 30, 2016. Although further details about these motions are not specified in the EOIR data, they include both substantive and procedural motions. Substantive motions include motions to terminate (asserting that the person is not actually subject to deportation or, in extreme cases, is a wrongfully detained U.S. citizen), motions for a custody redetermination (seeking release from detention), and motions for safeguards for mentally ill individuals who cannot participate adequately in their proceedings, among others. Procedural motions include motions to continue (to ensure adequate time to prepare a case), motions for telephonic testimony, and motions to accept late filings, among many others.

These motions are an essential part of NYIFUP attorneys’ pursuit of due process for their clients. While some motions can be made orally even by an unrepresented individual—such as a motion to continue requesting additional time—many motions require substantive legal research and briefing that can only realistically be adequately prepared by an attorney.

For individuals with a potential claim for legal relief, the attorneys can file applications for relief to fight their clients’ cases. Applications for relief include asylum applications, applications for LPR cancellation (discretionary relief for long-term LPRs), and applications for non-LPR cancellation (a form of relief for long-term undocumented residents who have U.S. citizen or LPR family), among several others. If granted, these applications generally provide an individual permanent residence and

place the client on the path to U.S. citizenship. However, regardless of the outcome, the ability to pursue legal relief through applications stands as another testament to the ability of NYIFUP attorneys to safeguard due process.

Overall, 45 percent of NYIFUP cases involved applications for relief in the immigration courts, while an unknown number also involved applications for immigration status (citizenship or visas that create a pathway to legal residency) to U.S. Citizenship and Immigration Services (USCIS) that are not tracked in court data. Table 7 shows the number of immigration court applications filed for NYIFUP clients. I-589 applications for asylum, withholding, and protection under the Convention Against Torture (CAT) are the most frequent applications filed. Applications are not mutually exclusive, meaning the same person can file multiple applications. This is particularly common for those applying for asylum, withholding, and CAT, as these forms of relief are submitted with a single application.

Table 7

Types of applications filed in NYIFUP cases (November 1, 2013 to June 30, 2016)

Application	Percent of total applications	Count
Convention Against Torture (CAT)	28%	385
Withholding	27%	369
Asylum	21%	282
Voluntary departure	10%	137
Cancellation of removal-non-LPR	8%	108
Cancellation of removal-LPR	4%	46
212(c)	1%	11
Adjustment of status	1%	9
Other waivers	0%	5
NACARA	0%	2
Unknown	0%	2
Total	100%	1,356

Source: EOIR data, includes all cases. The same individual can have multiple applications filed on his or her behalf. Applications for Withdrawal of Request for Admission (n=4) are omitted from this list.

Of the applications filed by NYIFUP attorneys, 532 (39 percent) have been filed in cases that have completed and do not have an appeal pending. These 532 applications were filed on behalf of 323 unique individuals, illustrative of the fact that the same person can submit many applications. Disregarding applications for voluntary departure, there are 208 unique individuals with applications filed. Of these non-voluntary departure applications already decided, 52 percent (N=109) had at least one application granted, indicating a successful legal outcome. These

applications represent the breakdown of the types, frequency, and outcome of applications filed by NYIFUP attorneys in pursuit of successful legal outcomes. Vera did not, however, empirically test the extent to which these applications contribute to explaining the increased likelihood of success for those individuals represented by a NYIFUP attorney. Additional research would be required to test whether these same individuals would have been able to prepare an application effectively on their own. The low success rates of unrepresented individuals provides preliminary evidence that this would not be the case.

The presence of an attorney helps the proceedings themselves run more smoothly, to the benefit of all

NYIFUP attorneys also serve a critical role in increasing the ease of proceedings for all involved. When individuals appear in court without representation, immigration judges are required to explain court processes and procedures to the non-citizen, often through an interpreter, before asking if they wish to proceed unrepresented or want to find an attorney. This process prolongs the hearing and burdens judges. Immigration Judge Burr explained that representation through NYIFUP alleviates these concerns:

In the old days [before NYIFUP], if [someone] were unrepresented, the judge would have to ... step in and provide rights and remedies to the respondent. Now, what's wrong with that picture? The judge is also the person who's deciding your case.

Judge Burr continued, "It makes the judge a lot more comfortable to know that this person is represented by competent counsel. Because then the judge can just be a judge." Similar feelings of role strain were also identified by the other two judges interviewed, who felt that they needed to go beyond their traditional judicial duties to provide individuals with some semblance of due process. This slows down the hearing, introducing inefficiencies that could be easily handled by an attorney outside of court hours, and hinders the court from operating at its full potential.

The presence of an attorney during a hearing also ensures that individuals understand and engage with the dialogue and events that take place, further helping the process to run more smoothly. This desire for immigrants to understand the proceedings has been universally expressed. As explained by Khalilah Taylor, ICE's Deputy Chief Counsel at Varick

Street, “Litigating cases where the respondent is represented is beneficial, as it allows for easier communication about issues that can be resolved with agreement.” Immigration Judge Weisel shared this sentiment, adding, “If an [ICE] trial attorney is sitting across from another attorney, then that might speed the process because their language is the same. They can resolve issues faster.” Immigration Judge Page noted that having lawyers prepare their clients also means the judge does not have to consume additional docket time explaining basic procedural issues, which is even more time consuming given that it often occurs through interpreters:

[Representation] is a major assistance to the court, because you have to explain all of these rights through an interpreter to somebody who really has no knowledge of the immigration system; whereas if you have a competent lawyer, it'd take you five minutes.

Proceedings in immigration court—including spoken language and written materials—occur entirely in English. Ninety-one percent of the individuals served by NYIFUP were born in non-English speaking countries, although the language barrier does often diminish with longer periods of residence in the United States. Although the court typically provides interpreters for non-English speaking individuals, the entirety of the court hearing is sometimes not interpreted directly to the immigrant, despite regulations requiring interpretation of the entire proceeding. Conversations between the judge and the attorneys, for example, may not be interpreted to the individual in proceedings.

Many native English speakers are often unable to fully comprehend complex legal jargon, let alone immigrants who do not speak English or speak English as a second language. New York Assembly Member Marcos Crespo visited a deportation proceeding and witnessed the challenges posed by language barriers for immigrants before a judge. In an interview with Vera staff, he noted how important it is to address language barriers to ensure due process. Language barriers hinder people's ability to understand their rights and prevent them from effectively identifying appropriate avenues for relief and pursuing those claims to legally remain in the United States. NYIFUP attorneys help to address this gap by conducting client meetings and explaining legal processes in clients' native languages. Most members of the provider legal teams are fluent in Spanish, and they also rely on telephonic and in-person interpreters as an aid to ensure they are able to meaningfully communicate with their clients.

NYIFUP attorneys more frequently win appeals to the Board of Immigration Appeals

When an immigration judge issues a decision, both the government (represented by ICE) and the non-citizen have the right to appeal that decision to the Board of Immigration Appeals. Table 8 shows the number of appeals filed for NYIFUP and unrepresented cases (combining ICE and non-citizen appeals), and the percent of completed appeals that ended in the non-citizen's favor.

Table 8

Number of appeals filed (November 1, 2013 to June 30, 2016)

	Total cases	Cases with appeal filed	Percent of cases with appeal filed	Cases with completed appeals	Percent of completed appeals ending in respondent's favor
NYIFUP	1,530	159	10%	72	14%
National unrepresented	121,632	4,229	3%	2,906	1%
Comparison courts unrepresented	3,743	178	5%	133	2%

Source: EOIR data, includes all cases. Includes both bond and case appeals. A statistical test to determine whether the NYIFUP proportion of appeals is significantly higher than the comparison group confirmed the difference of means. P-Value<0.01. The statistical significance of these findings was tested using a chi-squared test. The difference in the percentage of individuals with appeals filed is significant (p<0.001). However, too few cases won on appeal in each of the unrepresented groups to conclude significance in terms of appeal success.

As the above table shows, NYIFUP clients' cases experienced a higher rate of appeals than for unrepresented individuals at comparison courts and nationally. Ten percent of NYIFUP cases had an appeal filed compared to 3 percent of national unrepresented cases or 5 percent of unrepresented cases at the comparison courts. The higher rate of appeals accompanying cases that, in the absence of NYIFUP, would have otherwise gone unrepresented makes sense: as NYIFUP clients more frequently won successful outcomes and obtained bond at Varick Street, the government decided to contest more decisions. Alternately, as clients lost their cases or did not receive bond, NYIFUP attorneys were able to continue to represent their clients' interests to the BIA, seeking to ensure due process throughout the duration of the case.⁵¹ Table 8 also shows that NYIFUP attorneys won appeal outcomes that were favorable to their clients in 14 percent of their BIA cases as compared to 1 percent of national unrepresented cases and 2 percent of unrepresented cases at comparison courts. Given that the goal of appeals is to prove to an administrative body that the immigration judge should have reached a different conclusion in the case, the same challenges

that make it difficult for unrepresented persons to achieve successful case outcomes in front of an immigration judge also apply in this context. It is therefore unsurprising that unrepresented individuals would fare poorly on appeal. That NYIFUP attorneys won outcomes favorable to their clients in only 14 percent of their appeals is also not surprising given the overall low rate (5 percent) of non-citizen success on appeal nationally.

An explanation for the relative success of NYIFUP cases on appeal was offered by a NYIFUP attorney, who explained that good immigration lawyers seek to preserve as many issues as possible for appeal, should one become necessary, by comprehensively raising legal issues (a process known as “making a record”). The attorney’s point highlights both the complexity of immigration court defenses and the positive effects of maintaining representation from start to finish of a case: the same attorney has a thorough knowledge of the record on which to base arguments for appeal. Moreover, as NYIFUP attorneys pointed out, in a model that does not employ universal representation, clients who received poor quality representation at the immigration court level often seek counsel to pursue an appeal. In those instances, the record may not support all the possible issues that could be raised on appeal, requiring attorneys to attempt to interject new issues that with more skilled representation would have been raised at the immigration court level—an added efficiency NYIFUP achieves. However, because of strict legal rules requiring legal arguments to have been raised, in the first instance, to the immigration judge, lack of representation at the initial stages often forecloses later appellate review of newly raised issues. As discussed below, the ability of NYIFUP attorneys to raise and preserve evolving legal issues at the initial stages and through BIA appeals is therefore a critical factor in ensuring that issues can be properly addressed on appeal. This contributes not only to improved outcomes for individuals but also to the proper development of precedential case law from the BIA and ultimately from the federal courts.

Although NYIFUP cases that pursue relief take longer on average to complete than unrepresented cases, this may be indicative of effective representation

For those individuals who do not pursue relief, NYIFUP has proven successful at facilitating efficient court operations by quickly resolving

large numbers of cases with no viable relief early in the immigration court process. This is evidenced by the fact that none of the cases that ended within 30 days of the first master calendar hearing had relief applications filed. The vast majority of these cases end in deportation.

Table 9

Case time for cases that concluded with successful outcomes on the detained court dockets, by legal outcome (November 1, 2013 to June 1, 2015)

Outcome	Average days from initial master calendar hearing to close	
	Comparison courts unrepresented	NYIFUP
Relief	124	186
Termination	50	158
Admin closure	49	113

Source: EOIR and program data. The numbers include only completed cases and cases with appeals that completed on the detained docket. They do not include re-opened cases. Vera analyzed this data from the beginning of NYIFUP to the retirement of Judge Page—an immigration judge at Varick Street—on June 1, 2015, at which point the reduction in judge capacity led to substantial court backlogs unrelated to lawyer activity. For comparison courts unrepresented, n=96. For NYIFUP, n=62.

From an efficiency standpoint, resolving a substantial number of cases very quickly—and doing so after allowing for consultation with a trained attorney—enables the court to direct more resources towards those individuals with claims to legal relief.

Those cases that remain in the NYIFUP caseload beyond the first hearing take longer on average to complete compared to unrepresented cases at the comparison courts. These are the cases for which attorneys have identified possible defenses or forms of relief and undertake activities to pursue those remedies (see the discussion of applications and motions above at page 32).⁵² Table 9 depicts the average number of days from the initial master calendar hearing to the case's disposition in immigration court, by legal outcome, for cases that concluded successfully on detained court dockets.

As is apparent from the table, unrepresented cases at comparison courts have significantly shorter case times compared to NYIFUP cases. In certain situations, variables that influence case time, like the scheduling of hearings or the lengths of continuances, are out of the attorney's control. At other times, however, the longer case times for NYIFUP may be due to the activity of the attorney pursuing a wide range of relief for clients.

The steps required for an attorney to vigorously litigate a case take time—preparing a defense, obtaining documentation and other evidence,

traveling to detention centers to interview clients, making motions, filing applications for relief, or engaging in collateral proceedings—particularly when balancing caseloads of multiple clients. This was observed by Khalilah Taylor, ICE deputy chief counsel at Varick Street:

Since the introduction of NYIFUP, case completions have decreased ...⁵³ Anecdotally, since the introduction of NYIFUP, case completions are achieved with many more scheduled master and merits hearings. . . . Given the decrease in case completions statistically, all sides could benefit from a more strategic approach in litigating cases.

Immigration judges recognize that case duration may be negatively impacted by effective representation. However, judges interviewed by Vera opined that increased representation was valued enough to endure longer cases. As Judge Weisel shared, “Slowing the process down is really not the determinant. The determinant is whether someone gets due process.” Judge Burr made a similar observation:

Will some cases be a lot longer because they have diligent representation? Yes. But a lot of cases will be a lot shorter and, to my mind, it's a judge's dream to sit in court and to have a lawyer on each side who knows what they're doing.

While unrepresented cases pre-NYIFUP concluded more quickly, the dramatic improvement in win rates achieved by the NYIFUP program suggest that, prior to NYIFUP, many individuals with a legal right to remain in the United States were instead deported. The pursuit of all forms of legal relief afforded under U.S. immigration law may increase case times, but it is this pursuit that drives the increased success rate and that also has residual effects on the legal precedent used to interpret those laws. As the next section will detail, representation through NYIFUP has impacted cases far beyond New York City through the advancement of immigration case law.

The increase in legal representation has also contributed to the development of case law, as NYIFUP has helped establish legal precedent that has impacted proceedings well beyond the project

One of the most significant long-term impacts of NYIFUP will be its contribution to the development of the law. When Judge Katzmann originally sounded the alarm about the lack of adequate representation for immigrants, he highlighted the fact that the lack of lawyers in deportation proceedings meant that important legal issues were not appropriately preserved for review by appellate courts. As a result, prior to NYIFUP, the law was not always able to develop as it should through precedential appellate decisions because appellate courts can only rule on issues that are properly raised in the original deportation proceedings. NYIFUP has changed that, since almost all detainees in New York now have counsel and since there are institutional defenders with the vision and ability to identify and litigate important issues of law, something immigration judges routinely noted in interviews about NYIFUP.

Since appeals to the federal courts can take several years, NYIFUP cases are just now starting to percolate to the federal courts. One of the first NYIFUP cases to reach the U.S. Court of Appeals was *Lora v. Shanahan*, which was decided in 2015 by the Second Circuit.⁵⁴ In *Lora*, the court ruled that it was unconstitutional to hold immigrants in detention for more than six months without providing them with a bond hearing, regardless of prior criminal convictions. Prior to *Lora*, ICE would hold many individuals in detention for the full duration of their case—which could last years—without any individualized assessment of whether they were a danger to the community or a risk of flight. The *Lora* decision has allowed scores of NYIFUP clients to win release and, beyond NYIFUP, has become the legal standard for all deportation cases in the Second Circuit (spanning Connecticut, New York, and Vermont).⁵⁵

Subsequent litigation by NYIFUP attorneys has expanded the impact of the *Lora* decision to asylum seekers originally detained at the border.⁵⁶ NYIFUP attorneys also achieved a groundbreaking recent ruling from a federal district court, which ruled that, in setting bond amounts, immigration judges must consider an immigrant's ability to pay because it cannot "be the case that people are being detained simply for being poor."⁵⁷ Examples of NYIFUP cases contributing to the development of the law are sure to proliferate as the direct appeals of NYIFUP cases are just now beginning to reach the federal courts.

Beyond immigration court, NYIFUP attorneys initiate collateral proceedings to advance their clients' opportunities for a successful case outcome

Success in immigration court often hinges on collateral proceedings in other legal venues, which may shape an individual's criminal charge history, immigration status, bond eligibility, and broad access to relief. These collateral proceedings benefit from NYIFUP's holistic approach to legal cases and regularly occur in the following venues outside of immigration court:

- › **Criminal Court:** Coordination with defense attorneys in pending criminal cases and post-conviction motions to vacate defective criminal convictions that trigger deportation;
- › **U.S. Citizenship and Immigration Services (USCIS):** Applications for legal immigration status outside the immigration court that can form the basis of defenses to removal cases and may lead to deportation proceedings being terminated;
- › **Family Court:** Actions to obtain special family court orders, which are necessary to establish eligibility for special immigrant juvenile (SIJ) status certification from USCIS for abused, abandoned, and neglected children;⁵⁸ and
- › **Federal District Court:** Habeas corpus petitions challenging detention, most typically the refusal to hold a bond hearing.

While unrepresented persons may be able to pursue *pro se* relief applications in immigration court, it is almost impossible to succeed in collateral proceedings without the assistance of an attorney. Even for experienced immigration attorneys, success in collateral proceedings often requires consultation with experts in other subject areas of the law. Beyond the legal complexities involved, persons who are detained face basic challenges to accessing or filing applications or documents in collateral venues and to appearing for hearings.

NYIFUP providers described the many ways in which their clients benefited from collateral proceedings, and the importance of comprehensive legal screenings to identifying defenses to deportation outside of immigration court applications. In assessing clients' defenses in immigration proceedings, attorneys review potential eligibility for benefits provided by USCIS, including citizenship, derivative citizenship, and special visa categories for persons who are victims of various forms of

abuse, crime or human trafficking; who cooperate in federal criminal cases; or who belong to other vulnerable groups protected by immigration law.

Several NYIFUP clients ultimately proved citizenship, or eligibility for citizenship, as an outcome of their immigration proceedings, some because they had derivative citizenship status at some earlier point and were not subject to deportation, and others because the outcomes of their cases meant they were now eligible to apply and be approved for citizenship. Others were potentially eligible for relief from deportation but were unable to access that relief without the help of attorneys making applications to USCIS.

Simon's case illustrates the complexities involved in defending deportation cases and the overlap of multiple collateral venues. Simon had lived in the United States for more than 25 years as an LPR after migrating here from the Dominican Republic. For several years, Simon managed a family-owned bodega, and most recently worked as a deliveryman for a large company. In 2014, Simon was placed in removal proceedings after ICE officers arrested him at his home based on a 1999 misdemeanor conviction for possession of a controlled substance, for which he received a one year conditional discharge and no jail time. Despite adverse BIA precedent, his NYIFUP attorneys argued that he was bond-eligible. While the judge expressed sympathy given the time that had passed since his single conviction, he ruled that Simon was not eligible for bond. His NYIFUP attorneys concurrently filed an application for cancellation of removal in immigration court and a petition for writ of habeas corpus in federal district court arguing for a bond hearing. While the habeas petition was still pending, the immigration court granted the application for cancellation of removal. Simon was released, returning to live with his LPR wife and sons. The outcome of his immigration case enabled him to successfully apply to USCIS with the help of his NYIFUP team to naturalize and become a citizen, and his underage son thereby automatically received derivative citizenship.

Federico's case similarly required NYIFUP attorneys to engage in multiple collateral proceedings simultaneous to the immigration case. Federico, who was barely an adult when the NYIFUP team met him, came to the United States when he was 10 to reunite with his family. After Federico arrived, his father became physically abusive and threatened to kill the family. A few months before Federico's 21st birthday, NYIFUP attorneys won a family court order finding that Federico had been abused and abandoned by his father and that it was in his best interest to stay in the United States with his mother. His legal team subsequently pursued Special Immigrant Juvenile Status (SIJS) from USCIS with the family court finding. Simultaneously, they referred Federico's case to a criminal

appellate attorney who filed a motion seeking to file a late notice of appeal to enable Federico to appeal his sole criminal conviction for petit larceny, a conviction that barred him from obtaining a green card. After the late notice of appeal was accepted and the SIJS petition was granted, ICE agreed to terminate Federico's case. Federico was released from immigration detention and has been pursuing his criminal appeal and green card application with the direct support of his family.

NYIFUP providers occasionally even used collateral proceedings to aid in post-deportation relief to bring back persons who had already been physically removed from the United States, a remarkable feat far beyond the scope of most immigration practices. In 2013, Roberto was deported to Mexico. The NYIFUP attorneys had sought a U Visa, a special visa for victims of certain crimes, based on wage theft and witness tampering. This process involved certification with the Department of Labor and filing with USCIS. After the deportation, the NYIFUP team continued to seek the visa, responding to multiple USCIS requests for evidence. In 2017, nearly four years after NYIFUP had first taken on the case, the visa was approved by USCIS and Roberto was able to return to New York City with lawful status and with several years of lost wages waiting in an escrow account. The NYIFUP supervising attorney recounted, "It was a very emotional moment and a reminder of why we work so hard."

As these examples highlight, the cumulative benefits of legal representation extend beyond having a lawyer in immigration court to having a lawyer who can handle collateral proceedings in order to expand defenses to deportation and chances of successful outcomes.

NYIFUP attorneys' use of holistic legal services and wide-ranging subject matter expertise enable legal strategies across varied scenarios

NYIFUP attorneys are successful at initiating collateral proceedings in part because the organizations they work at represent indigent persons in a range of areas, including criminal defense, family defense, housing defense, and immigration defense. This allows NYIFUP attorneys to leverage in-house resources across areas of subject matter expertise to the benefit of their clients' cases. NYIFUP staff repeatedly emphasized the importance of this team-based approach. One attorney explained:

The outcomes we get for our clients aren't just because they're working with a good lawyer, but because there's a good *team* working with that client. [We have] social workers and criminal defense attorneys who

inform us about the [circumstances] that brought [the clients] into the immigration system in the first place. [There are] family court lawyers who can tell us details and provide the documents they had from a family court case 15 years ago.

Providers also fund in-house professionals in other areas, such as social workers, who work alongside attorneys on NYIFUP cases. “We have our social workers or [can retain] psychiatrists or physicians,” said one NYIFUP attorney. “Those kinds of experts identify what is actually going on with the client.” Remarked another attorney:

When I talk to other immigration attorneys who are not part of NYIFUP and don't have social workers on staff, I don't know how they do it... I don't know how to explain [mental health issues] to the judge. [W]henever we need, we can get a report from our [mental health] staff and that goes a long way.

Clients receive assistance on an array of issues from these staff who support the immigration attorneys, which helps attorneys build their cases and provides long-term benefits to the clients and their families. This attorney added, “If your client gets out of detention, [social workers] can connect them to the services they need to thrive. . . . It can help change their lives.” Social workers are particularly needed to work with clients who have suffered trauma. They are trained in how to safely work with a client to elicit information about historical trauma while minimizing the re-traumatization that occurs with recounting this information. Often, the identification of the trauma determines whether someone qualifies for relief. Clients do not always divulge this level of detail in initial screenings with attorneys. This issue is acutely felt in a triage system, as noted by Immigration Judge Burr:

A triage model is difficult You have to make decisions quickly and you can miss things. It's just that simple. . . . The level of detail you have to get into for certain forms of relief is just not amenable to triage.

NYIFUP attorneys who participated in focus groups repeatedly returned to the theme of how important their access to other subject-matter experts was for the success of their cases. As part of the holistic model they described, attorneys also mentioned the use of outside experts to enhance their legal arguments: “[W]e work with experts all the time and they're great ... subject matter experts, medical experts, forensic experts, all kinds of experts.”

In-house expertise in criminal law particularly benefited NYIFUP

cases. The intersection of criminal and immigration law is extraordinarily complex, and the result of many deportation cases depends on proceedings in both systems. For example, Congress has designated certain categories of crimes that can trigger deportation, but state criminal laws do not map easily onto the federal deportation categories. It can, therefore, be extremely difficult—even for attorneys, let alone unrepresented persons—to determine whether a conviction actually subjects an individual to deportation. This is a common issue for LPRs, who generally cannot be deported unless they have committed one of the categories of crimes designated by federal law. As another example of the complex and sometimes counterintuitive nature of the intersection between criminal and immigration law, “aggravated felonies” are the most serious category of federal deportation charges, yet an aggravated felony need not be either aggravated or a felony under state law.⁵⁹ Similarly confusing is the fact that crimes as minor as turnstile jumping or shoplifting can trigger deportation for an LPR,⁶⁰ but a gun possession conviction does not necessarily bar someone from obtaining a green card in the first place.⁶¹ Thus, the government’s classification of someone as deportable, like its classification of people as subject to mandatory detention, may be rebutted with additional background materials or legal arguments provided by subject matter experts. Immigration judges noted that one substantial difference between NYIFUP attorneys and the private bar was that NYIFUP attorneys worked at organizations that had experience with criminal statutes and were able to successfully intervene in cases involving criminal convictions. Judge Weisel explained:

NYIFUP fills a tremendous gap ... and it raised the bar. . . . I was particularly impressed by the comments made by the judges that I supervised at Varick Street about the quality of the briefs [from] the NYIFUP attorneys. . . . I attribute it to this: the [providers] are steeped in criminal law. They do criminal defense, so they know the criminal statutes. They may know criminal statutes better than an immigration practitioner who is more of a generalist.

This suggests that one reason NYIFUP clients with criminal charges may have greater success than other represented cases is because of the particular familiarity NYIFUP organizations have with criminal cases and the inconsistencies and challenges plaguing the criminal justice system. Several NYIFUP attorneys provided examples of situations where clients’ Notices to Appear (NTAs) incorrectly alleged criminal charges that the attorneys were able to correct. One NYIFUP attorney explained the frequency of errors in the legal documents, “We’ve found several times

that the certificates of disposition submitted by the government had errors in them. [When] we went back to check the record, they were actually not convictions for immigration purposes.” These sorts of errors not only impacted whether clients were deportable, but also whether they were subject to mandatory detention or the amounts of bond set in their cases. NYIFUP attorneys are able to navigate this terrain and greatly increase the chance of a legal success for people with criminal charges. As articulated by one NYIFUP attorney:

Had any other lawyer seen his case other than a NYIFUP lawyer, [the lawyer] would’ve said, ‘You have no case, no chance’. . . . The guy has been here [in the United States for] 35 years and he would have 100 percent been deported if it weren’t for NYIFUP. He’s just one case of hundreds. And now he’s out and he’s going to win ... And it’s because of the holistic public defender model.

Lisa’s case illustrates the complexity of overlapping jurisdictional and legal issues lawyers must grapple with in these cases, which benefit from the comprehensive and holistic approach NYIFUP employs. Lisa’s family came to the United States from Central America when she was in elementary school, and she has lived here as an LPR for more than 20 years. Lisa completed a few years of college, but she dropped out when she became involved in a relationship with a man who was physically and emotionally abusive. In the context of this relationship, she was arrested and charged with two counts of embezzlement, accused of taking money from two stores where she worked. After her arrest, her abusive boyfriend disappeared. Desperate and alone, she followed the advice of her public defender and accepted a plea deal to the two counts of embezzlement and a sentence of probation. Lisa successfully completed her probation and found work, supporting her aging mother, who suffers from several medical conditions.

Nearly 10 years later, Lisa was apprehended by ICE in her home and put into deportation proceedings. ICE charged that her convictions rendered her subject to mandatory detention. Lisa’s family scraped together money and hired an unscrupulous private attorney who pursued relief for which Lisa was ineligible and withdrew from representing her the day before her trial. At her next court date, Lisa was screened by a NYIFUP attorney who found her financially eligible for representation. Her NYIFUP attorney was able to secure *pro bono* counsel at a large law firm and co-counseled with the firm on a petition for habeas corpus in federal district court, arguing that Lisa’s detention without bond was illegal. In the meantime, her NYIFUP attorney filed an application in immigration court for withholding

of removal.⁶² The federal district court ultimately granted Lisa's habeas corpus petition and ordered the immigration judge to hold a bond hearing in her case. At that hearing the judge set a low bond that Lisa's family was able to pay. She was released on bond and has continued to pursue her application for withholding of removal outside of detention.

Chapter II: The impact of universal representation on family unity

Whereas the findings in Chapter I explore the impact of universal representation on case outcomes, Chapter II offers evidence of the more expansive impact of representation on reducing detention and the collateral benefits of reduced detention for families and communities. Beyond showing how representation helps keep families together, this chapter also illustrates the compounding benefits of representation for families of indigent defendants when members of their households are released from detention.

The effect of universal representation on reduced detention

NYIFUP clients repeatedly detailed the negative ripple effect of their detention and consequent lost income across their extended social networks. They often described the stakes of winning or losing bond or, ultimately, the immigration case, as extending far beyond their individual cases to the broader financial and emotional stability of their children and families. As such, clients explained that release from detention was as important as the final outcome of the case, because it allowed them to remain with their families, work in their communities while their deportation cases are pending, and prepare their affairs should the court order them to leave the country. Daniel, who was detained at the time he was interviewed and whose family almost lost their apartment as a result of his lost wages, expressed the frustration many NYIFUP clients felt over their detention, “I could have been working. I could have been doing something with my life.”

While immigration judges must apply the law in order to determine who is eligible for bond, there is often ambiguity about bond eligibility. NYIFUP not only led to the *Lora* decision described in the previous chapter, but program attorneys also regularly argued, with success, that their clients had been wrongly denied bond hearings, or had bond amounts set disproportionately high.

To be granted bond, those who are eligible must be able to effectively demonstrate to the judge that they are not a “flight risk”—that they have sufficient ties to the community that they will not abscond from future court appearances—and that they are not a danger to the community.⁶³ Individuals served by NYIFUP have been living in the United States for an average of 16 years, 30 percent of NYIFUP clients were LPRs at the time of intake, and 64 percent were employed at the time of apprehension—all factors that illustrate strong community ties and a high likelihood of continued appearance in immigration court upon release. Indeed, those NYIFUP clients who were released from detention during their immigration proceedings continued to appear for immigration court hearings at rates that far surpass national averages for unrepresented immigrants.⁶⁴

NYIFUP clients obtain bond and are released from detention at higher rates compared to unrepresented individuals at similar courts

NYIFUP obtains significantly higher rates of release for clients compared to unrepresented individuals, and with lower bond amounts. More than 750 clients, as of the data cutoff of June 30, 2016, have been reunited with their families.

NYIFUP attorneys screen all clients to assess their eligibility for bond, request timely bond hearings, and sometimes challenge the government’s initial assessment of their clients as ineligible for bond. NYIFUP attorneys then work with their clients and their families to obtain evidence such as recommendation letters from religious leaders, employers, and other members of the community to support character claims and to help the clients understand the importance their roles in their families can play in bond decisions. One NYIFUP attorney described the team effort that goes into preparing materials for a bond hearing, “You have a team that can put together a bond packet for you and contact people that you may not be able to contact otherwise to get letters and set up services. The ripple effect of that is really, really huge for so many people.”

✂

The release rate of NYIFUP clients is 24 percentage points higher than unrepresented individuals at similar courts.

✂

As shown in Table 10, 40 percent of the 1,530 NYIFUP clients identified in the EOIR data had been released on bond at the time of analysis and permitted to fight their deportation cases while in the community, a percentage that likely rose as additional clients received bond hearings following the June 30, 2016 cutoff of the EOIR dataset. In contrast, at similarly situated comparison courts, only 22 percent of unrepresented individuals whose hearings began in detention had been released on bond at the time of the analysis. The NYIFUP release rate is higher whether considering release on bond or release at disposition of the case by the immigration judge (IJ). When factoring in both types of release, 49 percent of NYIFUP cases are released and 25 percent of unrepresented cases at similar courts are released, a difference of 24 percentage points. In large part because of NYIFUP attorneys' aggressive pursuit of habeas corpus and other collateral proceedings, as well as the *Lora* decision, NYIFUP was able to secure the release of 42 percent of clients charged with aggravated felonies, more than 10 times the 4 percent rate achieved in the comparison courts.

Table 10

Rates of release from detention during immigration legal case (November 1, 2013 to June 30, 2016)

	Total number of cases	Percent overall released	Number released on bond	Number released at IJ disposition
NYIFUP	1,530	49%	611 (40%)	146 (10%)
Aggravated felony	275	42%	80 (29%)	35 (13%)
No aggravated felony	1,255	51%	531 (42%)	111 (9%)
Comparison Courts	3,743	25%	834 (22%)	92 (2%)
Aggravated felony	537	4%	11 (2%)	13 (2%)
No aggravated felony	3,206	28%	823 (26%)	79 (2%)

Source: EOIR data, includes all cases. The statistical significance of these findings was tested using a chi-squared test. The difference in the percentage of individuals released is significant ($p < 0.001$).

As some of the previous case examples have already illustrated, NYIFUP attorneys repeatedly intervened to help secure bond hearings for persons previously deemed ineligible. Annie is a 50-year-old woman married to a U.S. citizen and the mother of three U.S. citizens, including a teenage son suffering from severe mental and physical disabilities resulting from a recent traumatic brain injury and for whom Annie is the primary caretaker. Annie has lived legally in the United States for more than half her life. She was detained by ICE in a pre-dawn raid at her home because of an eight-year-old drug conviction for which she did not serve a day in jail. ICE argued that Annie was subject to mandatory detention, but the NYIFUP legal team filed a habeas corpus petition in federal court, which was granted, requiring the immigration court to conduct a bond hearing. The judge, after considering Annie's individual facts in favor of bond (including the more than 20 letters from friends and family in support of her release), found that she was not a danger to the community or a flight risk and set low bond. Annie was released the next day and reunited with her son for the first time in nearly six months. Absent NYIFUP representation, Annie would not have been able to establish eligibility for bond through the collateral habeas proceedings, nor would she have been able to gather overwhelming evidence that she was neither a flight risk nor a danger to the community.

Following the *Lora* decision, bond amounts were set at significantly lower amounts for NYIFUP clients, limiting the role of poverty as a barrier to release

In addition to higher release rates, NYIFUP representation is also associated with lower bond amounts for those granted bond, as is shown in Table 11. In this analysis, Vera used the latest bond amount found in the EOIR data, regardless of whether that amount was the original bond set by ICE or a pre-determined amount set by the court. Vera found that while there was no statistically significant difference in bond amounts pre-*Lora*, the average bond amount for NYIFUP clients was statistically significantly lower than that of unrepresented individuals at Varick Street post-*Lora*.

Table 11

Average bond set, by time period of initial master calendar hearing (MCH)

Time period of initial MCH	Population	Total number of cases	Average bond
Pre- <i>Lora</i> (Nov. 1, 2013 to Oct. 27, 2015)	NYIFUP	1,211	\$8,100
	Unrepresented at Varick	316	\$9,235
Post- <i>Lora</i> (Oct. 28, 2015 to Jun. 30, 2016)	NYIFUP	319	\$6,519
	Unrepresented at Varick	38	\$11,473

Source: EOIR data, includes all cases. The statistical significance of these findings was tested using an Analysis of Variance (ANOVA). The difference in average bond between “NYIFUP pre-*Lora*” and “Unrepresented at Varick” (both pre- and post-*Lora*) is not statistically significant. However, the difference in average bond between “NYIFUP post-*Lora*” and “Unrepresented at Varick” (both pre- and post-*Lora*) is statistically significant ($p=0.042$ and $p=0.011$, respectively).

The differences in bond amounts post-*Lora* demonstrate the ability of NYIFUP attorneys to obtain lower bonds for their clients, which is likely directly related to the higher NYIFUP release rate as compared to those who are unrepresented. For many people, having a bond set is only half the battle; for the bond to truly matter, it must be affordable for the individual and his or her family to pay. If the bond amount is too high to be paid, the individual will remain in detention for the duration of the case. Consequently, lack of financial resources acts as a barrier to release and, given the financial eligibility criteria for NYIFUP, this issue is particularly concerning for its clients. The lower bond amounts associated with NYIFUP therefore limit—but do not eliminate—the role of poverty in determining whether individuals are released from detention. One provider saw this clearly with the case of Perez, who had suffered depression and homelessness as a result of his HIV-positive status and abuse by former partners. Perez, who was seeking withholding, obtained a bond hearing through his attorney’s efforts at which his bond was lowered from \$15,000 to \$6,000. Perez still could not afford to pay the lower bond and was forced to remain in detention. The recent federal court decision referred to in Chapter I could change the situation faced by Perez and others, as it determined that a person’s ability to pay should be a factor in setting a bond amount.

One NYIFUP attorney explained the impact of the *Lora* decision on her ability to help clients secure bond:

We had clients who’d already been in [detention] for over a year who were the sole financial providers for their families. Their detention destroyed their families financially, emotionally. And getting them out on *Lora* not even necessarily winning their case, just getting them out of detention, saw a family be able to rebuild again. They had someone who could now bring in money for their family, who could now support them. You had children who were reunited with their parents again.

Representation in the immigration case has collateral benefits for other legal issues

NYIFUP providers repeatedly provided descriptions of cases their teams had represented for individuals who not only won release on bond but subsequently also pursued or won victories in other legal proceedings that impacted their children and families. Owen, for example, is a national of Mexico who has resided without authorization in the United States for more than a decade. He was initially taken into immigration custody without bond. His NYIFUP attorney helped him both secure a bond hearing and present compelling evidence concerning his infant U.S. citizen son who is currently in the custody of New York State because of having tested positive for methadone through his biological mother (a U.S. citizen). Owen presented evidence to the immigration court showing that the social services agency has considered Owen as a potential custodian for the baby and, based on this evidence, the immigration judge set a \$6,000 bond Owen was able to pay to secure release. Once out of custody, he was able to actively fight for his parental rights and reunification with his son.

David's experience also illustrates the poignancy of NYIFUP's impact on ancillary legal issues following release from detention. After almost a year in detention, David's family was experiencing financial instabilities that almost led them to lose their home. He explained, "We fell behind on our mortgage. The bank filed foreclosure on us. . . . [W]e had a certain amount saved up for the kids, for college ... [but] everything was being depleted." David's NYIFUP attorney was able to win relief for him so that he may now remain in the United States legally. Though his family was still struggling to recover economically, winning relief, and subsequently getting out of detention, enabled David to fight to keep his family's home, appearing in person at foreclosure proceedings. Slowly, his family was beginning to regain economic footing. He expressed his relief, "We're still fighting it. Thank God this is a state that you fight through the court system ... the banks can't just foreclose on your house here ... here you have to go through the courts, arbitration, and all those procedures."

Repeatedly, client narratives showed that individuals in custody were rarely able to successfully manage legal issues beyond their immigration cases from within detention. Thus, while bond helps clients to return to work and stabilize their household finances and family lives, release from custody also more broadly enables people to engage in other legal proceedings that will help their families maintain stability and unity. Reflecting on costs and benefits of NYIFUP, one of the attorneys underscored the importance of their work achieving family unity, observing, "We really do represent entire families. On almost every case, we represent an entire family."

Chapter III: The impact of universal representation on federal, state, and city tax revenue

The impact of universal representation on New York's workforce and economy

Immigrants, including NYIFUP clients, comprise a substantial portion of New York City and State's workforce, contributing directly to the state's economy

In 2016, 4.4 million immigrants resided in New York State and accounted for approximately 22 percent of the state's population of 19 million people. In New York City, where the largest proportion of the state's immigrants reside, more than one-third of the population is foreign-born.⁶⁵ This immigrant-to-native-born ratio is almost three times the national average and has shaped the economic and social fabric of the city. The 1,772 NYIFUP clients represented as of June 30, 2016, are part of this economic and social fabric. Consistent with the statewide labor force participation rate of 63.5 percent,⁶⁶ 67 percent of NYIFUP clients reported having a career or vocation, though only 64 percent of clients were actively working at the time of their legal intake.⁶⁷

Although immigrants in New York State contribute to "every major industry sector,"⁶⁸ 80 percent of NYIFUP clients employed at intake were concentrated in three job categories, classified by Vera as "services" (34 percent of working clients), "construction" (24 percent of working clients), and "repair, installation, and maintenance" (22 percent of working clients).⁶⁹ Given the 200 percent poverty-level threshold requirements for NYIFUP participation, it is not surprising that such a high percentage of employed clients worked in relatively low-wage occupations.

Though NYIFUP clients were not earning high incomes, their economic contributions nonetheless comprise an important source of tax revenue for New York. The NYC Comptroller's Office recently reported that immigrants account for 32 percent of total earnings in New York City,⁷⁰ or nearly one-third of the city's total gross product.⁷¹ The Institute of Taxation and Economic Policy further estimates that in 2012, undocumented immigrants—who make up about 5.7 percent of the state's workforce⁷²—alone contributed \$1.1 billion in state and local taxes, including \$566.1 million in sales taxes, \$185.7 million in personal income taxes, and \$341.7 million in property taxes.⁷³ If all undocumented immigrants in New York were to have lawful permanent residence and work authorization, they would pay an additional \$200 million in state and local taxes.⁷⁴

The success rate of NYIFUP cases has resulted in receipt or retention of work authorization for many individuals, who can now contribute to state and local tax revenue for New York

By helping individuals obtain work authorization through successful legal outcomes, NYIFUP has contributed to the transition of individuals from the under-the-table economy to the licit, tax-paying economy. As detailed in Chapter I, an estimated 48 percent of NYIFUP cases will end in a successful legal outcome. Many of these clients lacked legal status and were thus without work authorization at the time they entered deportation proceedings. For individuals and their families, the impact of these successful outcomes can be life-changing, as detailed by qualitative evidence previously discussed in Chapters I and II. For government, the NYIFUP clients' gain of status and subsequent work authorization is also beneficial because of the tax revenue that results from an individual's transition to a tax-paying job. Vera estimates that a total of 136 NYIFUP clients based in New York City and 106 people based in New York State will gain work authorization as a result of their successful legal outcomes—individuals who previously did not have work authorization when they entered deportation proceedings. Table 12 shows the number of people expected to gain work authorization as a result of NYIFUP, by the borough within New York City where they live and presumably work.

Vera generated these estimates first by identifying the legal status of the NYIFUP clients at their initial intake. For clients whose cases have completed, Vera identified 53 New Yorkers (including 45 in New York City and eight outside the city in New York State) who lacked status at the time of intake, and whose cases resulted in legal relief or termination—case

outcomes which are virtually always accompanied by work authorization. An additional 21 previously-undocumented New Yorkers received the successful outcome of administrative closure, which often includes work authorization but is not guaranteed. For this reason, these individuals are characterized in Table 12 as “work authorization likely.”

Table 12

Number of out-of-status clients who gained work authorization due to successful case outcomes, by New York City borough

Location	Obtained work authorization	Work authorization likely	Projected to obtain work authorization (pending cases)	Total
NYC total	45	15	76	136
Bronx	15	5	12	32
Brooklyn	15	5	28	48
Manhattan	3	0	9	12
Queens	11	5	24	40
Staten Island	1	0	3	4
New York State	8	6	92	106
Total	53	21	168	242

Source: EOIR and program data. The first two columns, titled “obtained work authorization” and “work authorization likely,” include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. The third column, titled “projected to obtain work authorization,” includes pending cases.

Vera applied the same approach to the large volume of pending cases, using the statistical model described in Chapter I to estimate the success rate—and, by extension, work authorization—for these pending cases. Based on this technique, an additional 168 NYIFUP clients in New York are projected to have a successful outcome. This produces an estimate of 242 people who may gain work authorization due to NYIFUP.⁷⁵

In addition to those who gain legal status in part due to representation through NYIFUP, many others were LPRs who are able to maintain the legal status that they already had. A number of clients either established they were citizens as a defense to deportation or were subsequently naturalized following the successful outcome of their cases. Using the same procedure described above, Vera calculated the number of individuals who maintained legal status by achieving a successful outcome in their legal case.

Table 13

Number of people with legal status who maintained work authorization due to successful case outcomes, by New York City borough

Location	Maintained work authorization	Projected to maintain work authorization (pending cases)	Total
NYC total	102	48	150
Bronx	23	9	32
Brooklyn	37	26	63
Manhattan	18	5	23
Queens	19	6	25
Staten Island	5	2	7
New York State	26	11	37
Total	128	59	187

Source: EOIR and program data. The column titled “maintained work authorization” includes only completed cases and does not include re-opened cases or cases that had an appeal pending as of June 30, 2016. The column titled “projected to maintain work authorization” includes only pending cases.

As Table 13 details, Vera estimates that NYIFUP legal outcomes will enable 187 individuals from New York City and State to maintain the work authorization that they had at the time of intake into deportation proceedings. In this analysis, a legal outcome of “administrative closure” will almost certainly result in continued work authorization—unlike for out-of-status individuals—and therefore these cases are collapsed into the “maintained work authorization” category. A total of 128 individuals certainly maintained work authorization because of their NYIFUP representation. An additional 59 clients whose cases are pending are also likely to maintain their existing work authorization.⁷⁶

✦ Vera estimates that NYIFUP helped 242 previously out-of-status New Yorkers *gain* work authorization and 187 New Yorkers *maintain* their existing work authorization by winning their immigration cases. ✦

Gaining work authorization has beneficial tax implications for New York City and State, as people who previously worked in under-the-table jobs are able to transition to tax-paying positions in the legal economy. This transition is beneficial for the individual and the local economy. For the individual, legal work has the benefit of government protections and oversight meant to protect laborers and ensure safe work environments.⁷⁷ The absence of this regulation in under-the-table positions has resulted in more frequent human rights violations.⁷⁸ For the local economy, legal work has the benefit of increasing the assimilation of people into the community, empowering individuals to participate in many facets of democratic life—unions, industry organizations, community groups—that are not often accessible to under-the-table laborers.⁷⁹

To measure the extent of this economic impact, Vera enlisted the *pro bono* assistance of Stout, a financial advisory firm, to estimate the tax revenue produced by these gains in work authorization. Vera estimated the applicable tax rate for NYIFUP clients who reside in New York City and State by incorporating tax rates for income tax, payroll tax, estate tax, excise tax, sales tax, and the federal deduction offset.⁸⁰ The income level for each individual was determined by the type of job that individual worked at the time they entered deportation proceedings. Vera assumed each individual would return to similar job functions and calculated salary based on the median income of that job function in New York.⁸¹ Table 14 shows the impact of work authorization in the form of tax revenue across all government levels.

Table 14

Annual tax revenue as a result of work authorization gained or maintained through NYIFUP, by level of government

	New York City residents	New York State residents (excluding New York City)	Combined New York City and State residents
State and local tax revenue	\$634,662	\$275,490	\$910,152
Federal tax revenue	\$1,253,701	\$552,332	\$1,806,033
Total	\$1,888,363	\$827,882	\$2,716,185

Source: EOIR and program data. These estimates only include completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016.

As Table 14 shows, Vera estimates that the state and local tax revenue for the cohort of NYIFUP clients who reside in New York City with work authorization is at least \$634,662 for the first year of employment. Applying this method to all New York State residents (including New York City), Vera estimated the state and local tax revenue to be \$910,152. Overall,

including federal taxes, the revenue resulting from work authorization gained or maintained by this cohort of NYIFUP clients totals just over \$2.7 million in the first year.

These estimated tax revenues of \$2.7 million are for one year, so they will continue for this cohort of NYIFUP clients for many years to come. Later cohorts of NYIFUP clients will also have successful outcomes, and they too will gain or maintain work authorization, leading to tax revenues for the federal, state, and local government. Thus, not only will the annual tax revenues accrue year after year, but the number of former NYIFUP clients generating the revenues will also increase every year, compounding the benefits to the city and state of New York and the federal government.

Conclusions

Far beyond the measurable effects of NYIFUP on case outcomes, the program achieved its goal of offering universal access to justice by providing qualified attorneys to low-income immigrants detained in New York City. This model has brought fairness and due process to immigration proceedings, ensuring all persons facing deportation have equal access to the defenses and protections available under the law. Immigration Judge Weisel's observations nicely summarize the program's impact:

The most important message to get across is that [NYIFUP] has universally helped provide justice, assist[ed] in the delivery of justice by [providing attorneys to] individuals who might not have been able to obtain counsel. That's fundamental.

As Judge Weisel's statement suggests, some of what NYIFUP achieves cannot adequately be measured using data alone, though the results described in this report are clear: lawyers make a marked difference in helping clients achieve successful outcomes in deportation cases. They do this through the everyday work of lawyering that begins with thoroughly screening clients to assess viable defenses to deportation. For many clients, this means accepting the reality that there are no legal paths to remaining in the United States, while for many others, it means having a fair chance to access the relief and defenses available to them under the law. This is true for NYIFUP clients regardless of their immigration status or past, and it is true whether clients ultimately achieve successful outcomes or are required to depart the country. This is what a universal representation model powerfully achieves: everyone is entitled to the same opportunity to access the law. When there are possible defenses to pursue, NYIFUP attorneys engage in zealous representation, as all attorneys pledge to do. They file motions and applications and initiate collateral proceedings across a range of complex legal arenas in order to strengthen their clients' defenses to deportation. And they do so with great success, helping a predicted 48 percent of NYIFUP clients overall to achieve outcomes that allow them to remain in the United States with their families. This success rate is 1,100 percent greater than what these indigent clients would have achieved without counsel and puts low-income New Yorkers on a level

playing field with other non-citizens who can afford private attorneys.

The evaluation also shows that immigration court efficiencies are not simply achieved by moving cases off the docket quickly. Rather, stakeholders repeatedly observed what the quantitative data show: lawyers help focus court resources where they are most needed, sometimes extending the case times of detained persons who would otherwise have proceeded unrepresented, but doing so by engaging in high levels of case activity. This moves more clients toward fair outcomes, allowing judges to adjudicate bond hearings and immigration cases without having to worry that non-citizens may not understand their options or what is occurring in the case and, frankly, forcing the government to sometimes slow down the enforcement juggernaut in the interest of fairness. There are many benefits to doing so. One NYIFUP provider reflected on this, observing:

If you divide [the program's cost] by every person we are actually helping it's not that expensive. You can't just look at the cost per respondent, it doesn't do the work justice.

Instead, as the title of the program suggests, NYIFUP is preserving family unity. The collateral benefits of one person's successful immigration court outcome extend far beyond that one individual. These collateral benefits accrue to individual clients and their families financially and emotionally when clients are able to be released from detention and return to their jobs, defend their cases from their communities, and re-stabilize their households financially. Out of detention, they are able to attend to matters they were unable to manage in custody, including parenting their children. With successful case outcomes, they are able to continue working with legal status and enhance their tax contributions to government, to the benefit of all.

During the first few years of NYIFUP, other jurisdictions have taken an interest in New York's cutting edge idea of providing representation to indigent defendants in deportation hearings. As NYIFUP continues to level the playing field for low-income non-citizens detained in New York, the findings in this evaluation may provide valuable insights to other cities as they draw on New York's model.

Endnotes

- 1 From November 2013 to April 2014, NYIFUP, in its pilot phase, provided representation to a limited number of non-citizens at Varick Street.
- 2 This number includes detained immigrants who are subsequently released. It does not differentiate between whether the attorney started on the case while the individual was detained or after release. See U.S. Department of Justice, Executive Office for Immigration Review (EOIR), Office of Planning, Analysis & Technology's CASE database (EOIR data). The numbers include only completed cases and does not include re-opened cases or cases that have an appeal currently pending.
- 3 See generally National Immigration Law Center, *Blazing a Trail: The Fight for Right to Counsel in Detention and Beyond* (Los Angeles: National Immigration Law Center, 2016) (discussing legal information and representation initiatives), <https://perma.cc/95RK-T2YY>.
- 4 Individuals have a credible fear of persecution if they can establish a significant possibility that they are eligible for asylum or other persecution-based relief. See Immigration and Nationality Act (INA), §235(b)(1)(B)(v); 8 CFR §235.6.
- 5 For individuals apprehended at the border, the proceedings can be initiated by U.S. Customs and Border Protection. See U.S. Customs and Border Protection, "Immigration Inspection Program," <https://perma.cc/V82Y-Q5TF>.
- 6 INA §237(a)(2)(A), (B).
- 7 On September 30, 1996, President Clinton signed the Illegal Immigrant Reform and Immigrant Responsibility Act, commonly referred to as IIRAIRA. IIRAIRA amended the INA, including by increasing the reasons for which non-citizens can be deported. Pub. L. No. 104-208 (Division C), 110 Stat. 3009-546.
- 8 Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report – DHS Immigration Enforcement: 2016* (Washington, DC: Department of Homeland Security, 2016), 3 and Figure 1, <https://perma.cc/Q9G7-BGAD>.
- 9 EOIR, *FY 2016 Statistics Yearbook*, B1 and Table 3, (Falls Church, VA: EOIR, 2017), <https://perma.cc/4BCR-9SG4>.
- 10 *Ibid.* at F1 and Figure 10.
- 11 Office of Immigration Statistics, *2015 Yearbook of Immigration Statistics* (Washington, DC: Department of Homeland Security, 2016), 103 and Table 39, <https://perma.cc/9UT8-37UV>.
- 12 See, e.g., Emily Ryo, "Detained: A Study of Immigration Bond Hearings," *Law & Society Review* 50, no. 1 (2016), 117-53 (finding that the odds of being granted bond are more than 3.5 times higher for detainees represented by attorneys than those who appeared pro se); Ingrid V. Eagly & Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (2015), 1-91 (finding that the odds were five-and-a-half times greater that immigrants with representation obtained relief from removal than those without), http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review; Jayashri Srikantiah, David Hausman, and Lisa Weissman-Ward, "Access to Justice for Immigrant Families and Communities: A Study of Legal Representation of Detained Immigrants in Northern California," *Stanford Journal of Civil Rights and Civil Liberties* 11, no. 2 (2015), 207-35, 212 (finding that detainees represented by the surveyed nonprofits won their deportation cases 83 percent of the time, as compared to detained individuals without counsel who only prevailed 7 percent of the time); New York Immigrant Representation Study Steering Committee, "Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings – New York Immigrant Representation Study Report: Part 1," *Cardozo Law Review* 33, no. 2 (2011), 357-416, 384 and Figure 7 (finding that represented detained immigrants were six times more likely to succeed in preventing deportation than pro se detained immigrants).
- 13 *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003. See also Noel Brennan, "A View from the Immigration Bench," *Fordham Law Review* 78, no. 2 (2009), 623-31, 624, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4479&context=flr>.
- 14 INA §301(c)-(e) and 309 (defining the parameters of acquired citizenship for individuals born abroad to U.S. citizens); INA §320 (defining the parameters of derived citizenship for certain LPRs whose parents naturalize while they are children).
- 15 Jacqueline Stevens, "U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens," *Virginia Journal of Social Policy & the Law* 18, no. 3 (2011), 606-720, 608, <https://perma.cc/D4AW-C457>.
- 16 See, e.g., *Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952) ("Deportation, however severe its consequences, has been consistently classified as a civil, rather than a criminal, procedure").
- 17 *Padilla v. Kentucky*, 559 U.S. 356, 360 (2010) (quoting *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948)).
- 18 Dana Leigh Marks, "Immigration judge: Death penalty cases in a traffic court setting," CNN (June 26, 2014), <https://perma.cc/SXV6-BKZN>.
- 19 *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings").
- 20 INA §240(b)(4)(A).
- 21 See *Franco-Gonzalez v. Holder*, CV 10-02211 DMB (DTBx) (C.D. Ca.

- April 23, 2013), <https://perma.cc/J9XN-YLFZ>. The Franco court held that eligible respondents, who were limited to those detained in the states of California, Arizona, and Washington, are entitled to counsel. Simultaneous to the issuance of the permanent injunction in *Franco-Gonzalez*, EOIR and DHS announced a nationwide policy to provide appointed counsel for unrepresented detained immigrants who have been found mentally incompetent to represent themselves. See EOIR, “Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions,” press release (Washington, DC: EOIR, April 22, 2013), <https://perma.cc/ZN59-5KNN>. This policy was activated at Varick Street in March 2017 and is in the final stages of being rolled out nationwide.
- 22 As of the time of report publication, more than 2,300 individuals have been represented by the program.
- 23 New York Immigrant Representation Study Steering Committee, *Accessing Justice – New York Immigrant Representation Study Report: Part 1* (New York: New York Immigrant Representation Steering Committee, 2011).
- 24 New York Immigrant Representation Study Steering Committee, *Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings* (New York: New York Immigrant Representation Study Steering Committee, 2012), <https://perma.cc/92HQ-KC7S>.
- 25 Robin G. Steinberg, “Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients,” *New York University Review of Law and Social Change* 30, no. 4 (2006), 625-37, <https://perma.cc/P4EJ-J72P>.
- 26 See, e.g., Andrew I. Schoenholtz and Hamutal Bernstein, “Improving Immigration Adjudications through Competent Counsel,” *Georgetown Journal of Legal Ethics* 21, no. 1 (2008), 55-60 (finding that asylum seekers represented by counsel were three times more likely to succeed in their claim than *pro se* applicants), <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2916&context=facpub>; Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Review* 60, no. 2 (2007), 295-411, 340 (finding that asylum seekers are almost three times more likely to win their proceedings if they are represented), <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub>; Donald Kerwin, “Revisiting the Need for Appointed Counsel,” *Migration Policy Institute Insight*, no. 4 (2005), 1-19 (finding that represented non-detained immigrants were nearly 50 percent more likely to succeed in applications for relief from removal than unrepresented non-detained immigrants, and represented detained immigrants were 60 percent more likely to succeed in applications for relief from removal than unrepresented detained immigrants). See also *supra* n.12.
- 27 John D. Montgomery, *Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings* (New York: NERA Economic Consulting, 2014).
- 28 Although NYIFUP officially launched on November 7, 2013, a handful of individuals were listed in the data with initial master calendar hearings during the first week of November 2013. To incorporate these cases into the evaluation, the start date for all analyses was pushed back to November 1.
- 29 For details about TRAC’s standing FOIA request, see “Transactional Records Access Clearinghouse,” <https://perma.cc/YQC5-QEAN>.
- 30 Interviews and focus groups were audio recorded, transcribed, and coded to draw out commonalities and other emerging themes. For a complete list of interview questions and the accompanying coding scheme, see the Qualitative Methodological Appendix, available at www.vera.org/nyifup-evaluation-methodology.
- 31 Immigration Judges Sarah Burr and Robert Weisel were successively the assistant chief immigration judge with supervisory responsibility over the New York and New Jersey immigration courts, including Varick Street. Judge Page sat at Varick Street for the first year-and-a-half that NYIFUP was in operation. EOIR declined to allow interviews with current immigration judges.
- 32 For example, 4 percent (N=64) of the 1,551 NYIFUP cases identified in the EOIR data lacked representation information, such as an E-28 (“notice of entry of appearance as attorney or representative before the immigration court”) date or attorney name. It is therefore likely that similar errors influence the comparison groups, with a small percentage of represented individuals being incorrectly categorized due to missing representation information.
- 33 In federal fiscal year 2016, cases ending in removal took less than half as long to complete as those that resulted in relief (353 vs. 880 days, respectively), according to national data from TRAC. For details about TRAC’s immigration court data, see “Transactional Records Access Clearinghouse,” <https://perma.cc/YQC5-QEAN>.
- 34 Sixty-four percent of represented people at Varick Street were represented by NYIFUP in FY15 and 50 percent of represented people at Varick Street were represented by NYIFUP in FY16.
- 35 Thomas DiNapoli, *A Portrait of Immigrants in New York* (New York, NY: Office of the New York State Comptroller, 2016), 14, <https://perma.cc/2PTE-UHPN>.
- 36 The average is for all NYIFUP clients who had full information available in EOIR data for inclusion in statistical modeling. The median of this group is 15 years residency in the United States, which suggests that the average is not skewed by a few individuals who resided in New York for a very long time.
- 37 As a point of comparison, Centers for Disease Control (CDC) statistics from the 2006 National Survey of Family Growth show that 47 percent of men age 15-44 had at least one biological or adopted

- child. While 58.4 percent of women in the same age cohort in the CDC statistics had at least one child, most NYIFUP participants were male. G.M. Martinez, A. Chandra, J.C. Abma, J. Jones, and W.D. Mosher, “Fertility, Contraception, and Fatherhood: Data on Men and Women from Cycle 6 (2002) of the National Survey of Family Growth” (Washington, DC: U.S. Department of Health and Human Services, National Center for Health Statistics, 2006), <https://perma.cc/5FYC-BV54>.
- 38 Nationally, families with children had an average of just under two (1.89) children in 2016 according to the U.S. Census Bureau’s Current Population Survey. See U.S. Census Bureau, “Historical Families Tables,” Table FM-3 (Average Number of Own Children Under 18 Per Family, By Type of Family: 1955 To Present), November 2016, <https://perma.cc/N2GH-TPS9>. The number of children for each NYIFUP client ranged from one to 11.
- 39 Derek D.F. Cornwell, *Naturalization Rate Estimates: Stock vs. Flow* (Washington, DC: Department of Homeland Security, 2006), <https://perma.cc/T5CV-JNMV>.
- 40 EOIR, *FY 2016 Statistics Yearbook* (Falls Church, VA: 2017).
- 41 Relief from removal may take several different forms that result in permission to remain in the United States legally—and sometimes pave the way for people to obtain permanent legal status or to pursue citizenship—and can include cancellation of removal, adjustment of status, asylum, withholding of removal, and protection under the Convention Against Torture, among many others. Ira J. Kurzban, *Kurzban’s Immigration Law Sourcebook – 12th Edition 1075* (Washington, DC: American Immigration Lawyers Association, 2010).
- 42 Immigration judges may terminate removal proceedings on a number of grounds, including when there are defects in the charging document or if ICE has not met its burden of proof. Cases that are terminated are considered completed, although, in some circumstances, the government may initiate a new case in the future. While termination is a method for avoiding deportation, it does not result in a change to the non-citizen’s immigration status. See 8 C.F.R. §1239.2(f).
- 43 Administrative closure is a procedural tool used to indefinitely pause (sometimes forever) removal proceedings by taking a case off the court’s docket. Cases that are administratively closed can be reopened at a later date. *Matter of W-Y-U-*, 27 I&N Dec. 17, 17 (BIA 2017), <https://perma.cc/FYH7-7MBV>.
- 44 The statistical significance of these findings was tested using a t-test. The difference in case duration between successful and unsuccessful cases is statistically significant ($p < 0.001$).
- 45 See the Quantitative Methodological Appendix, available at www.vera.org/nyifup-evaluation-methodology, for a detailed explanation of how the outcomes for pending cases were estimated.
- 46 Although the estimates regarding pending cases are useful towards understanding the success rate expected of NYIFUP, statistics that rely on completed cases throughout the remainder of the evaluation are based solely on the 849 cases that have actually received an outcome in immigration court.
- 47 See the Quantitative Methodological Appendix for detailed information about how these comparison courts were selected and for a description of how they differ from the national population.
- 48 These test results are included in the Quantitative Methodological Appendix.
- 49 Length of residency is also explicitly itself a discretionary factor that immigration judges are required to consider in many cases. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).
- 50 *Reno v. Flores*, 507 U.S. 292, 306 (1993).
- 51 Of the 159 appeals filed, 72 percent (114) were filed by NYIFUP attorneys on behalf of their clients. In five additional cases, both the ICE and the NYIFUP attorney filed an appeal, bringing the total percentage of cases with the non-citizen filing the appeal to 75 percent (119).
- 52 Attorneys handling immigration court cases that involve collateral proceedings often have no control over the duration of proceedings in those venues.
- 53 Deputy Chief Counsel Taylor cites the EOIR Statistical Yearbook, which shows case completions for the last few years as FY 2013–1,043, FY 2014–995, FY 2015–714, FY 2016–676. EOIR’s Statistical Yearbooks are available at <https://perma.cc/3FQT-JFRM>. The same Statistical Yearbooks show that the number of new NTAs at Varick Street were 1,402 in 2013, 1,341 in 2014, 1,057 in 2015, and 1,183 in 2016, thus decreasing markedly from 2013 to 2015, before trending somewhat up for 2016. While there had been three immigration judges regularly assigned to Varick Street from November 2013 until June 1, 2015, when Judge Page retired, thereafter there were only two judges regularly assigned to the court, which affected the number of cases that could be processed.
- 54 *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015), cert. pending, No. 15-1205, (March 25, 2016), cert denied, No. 15-1307, 136 S. Ct. 2494 (2016).
- 55 The issue has now been taken up by the Supreme Court in a similar case from California, *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), cert. granted sub nom., *Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016), on which a nationwide ruling is expected sometime before July 2018.
- 56 See, e.g., *Saleem v. Shanahan*, No. 16-CV-808 (RA), 2016 WL 4435246 (S.D.N.Y. Aug. 22, 2016) (finding that DHS violated Saleem’s right to due process by continuing to detain him after 17 months without a bail review hearing after being designated an “arriving alien”).

- 57 *Celestin v. Decker*, No. 17-CV-2419 (RA) (S.D.N.Y. June 14, 2017), oral decision, transcript at 12.
- 58 Under New York law, these special orders may be sought for individuals who have not yet reached their 21st birthday.
- 59 See, e.g., *Anderson v. INS*, 121 Fed. Appx. 412 (2d Cir. 2005) (treating a misdemeanor marijuana sale as an aggravated felony); *Garcia v. INS*, 239 F.3d 409, 411-12 (1st Cir. 2001) (misdemeanor attempted theft of tire rims treated as an aggravated felony under the INA).
- 60 See INA §237(a)(2)(A)(i)-(ii) (providing for the deportation of individuals convicted of crimes involving moral turpitude); *Mojica v. Reno*, 970 F. Supp. 130, 137 (E.D.N.Y. 1997) (classifying turnstile jumping in the New York City subway system leading to a “theft of services” misdemeanor conviction as a “crime of moral turpitude,” subjecting the individual to deportation (internal quotation marks omitted)).
- 61 Compare INA §237(a)(2)(C) (subjecting individuals to deportation for firearms offenses) with INA §212(a)(2) (establishing the criminal bars to obtaining a green card and omitting firearms offenses from such bars).
- 62 Withholding of removal is an order issued by an immigration judge to a person who demonstrates a likelihood of persecution in the home country on account of race, religion, nationality, membership in a particular social group, or political opinion. INA §241(b)(3).
- 63 *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
- 64 At the time of the analysis, only 10 of 611 NYIFUP clients released on bond had received orders of removal in absentia for failing to appear for a subsequent court date.
- 65 Thomas DiNapoli and Kenneth Bleiwas, *The Role of Immigrants in the New York City Economy* (New York: Office of the New York State Comptroller, 2015), <https://perma.cc/K666-DQQB>.
- 66 Thomas DiNapoli, *A Portrait of Immigrants in New York*, at 14, <https://perma.cc/2PTE-UHPN>.
- 67 The difference between the number of people who reported a job and the number of those employed at the time of intake may in part be because some clients had been incarcerated prior to their immigration detention, and thus had already been out of the workforce. Others may work seasonally or as day laborers and thus may have been temporarily not working.
- 68 DiNapoli, *A Portrait of Immigrants in New York*, 2016, at 15, <https://perma.cc/2PTE-UHPN>.
- 69 The jobs listed in the program data do not always contain sufficient detail to be grouped into the more commonly-cited job categories created by the U.S. Census or Department of Labor.
- 70 Scott Stringer, *Our Immigrant Population Helps Power NYC Economy* (New York: New York City Comptroller, Bureau of Budget, 2017), 3, <https://perma.cc/XA58-TBRB>.
- 71 DiNapoli and Bleiwas, *The Role of Immigrants in the New York City Economy*, 2015.
- 72 Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases* (Washington, DC: Pew Research Center’s Hispanic Trends Project, 2014), 16 and Figure 1.4, <https://perma.cc/BT7D-4ESN>.
- 73 Matthew Gardner, Sebastian Johnson, and Meg Wiehe, *Undocumented Immigrants’ State & Local Tax Contributions* (Washington, DC: The Institute on Taxation & Economic Policy, 2015), 13, <https://perma.cc/6F48-C8D6>.
- 74 *Ibid.*
- 75 Vera was only able to conduct the analysis on one-third of the pending cases due to an inability to match employment information for two-thirds of the pending cases. This means the estimate is very likely an underestimate of the number of people impacted. It should also be noted that the model for projecting outcomes does not distinguish between the types of successful outcome.
- 76 Vera was only able to conduct the analysis on one-third of the pending cases due to an inability to match employment information for two-thirds of the pending cases. This means the estimate is very likely an underestimate of the number of people impacted.
- 77 The U.S. Department of Labor is responsible for “the administration and enforcement of the laws enacted to protect the safety and health of workers in America.” See U.S. Department of Labor, “Workforce Safety & Health,” <https://perma.cc/W6UG-EG3X>.
- 78 See, e.g., “Immigrant Workers in the United States Meat and Poultry Industry,” Submission by Human Rights Watch to the Office of the United Nations High Commissioner for Human Rights, Committee on Migrant Workers (2015), <https://www.hrw.org/legacy/backgrounder/usa/un-sub1005/>.
- 79 See, e.g., The White House, “Strengthening Communities by Welcoming All Residents: The Federal Role in Immigrant & Refugee Integration,” press release (Washington, DC: The White House, July 16, 2014), <https://perma.cc/8HA5-MT6F>.
- 80 Property taxes were not included due to the uncertainty over home ownership. Federal tax rules allow taxpayers to claim itemized deductions for any state and local personal income, property sales, and general sales taxes. Since these taxes can be itemized on annual federal tax returns, Vera adjusted the total state and local taxes to exclude the deduction as a percentage of total taxable income.

81 New York Department of Labor, “Occupational Wages,” <https://www.labor.ny.gov/stats/lswage2.asp#33-0000/>. Students were assumed to be unemployed. Additional information about these salary estimates are in Appendix 1.1 of the Quantitative Methodological Appendix.

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