



**American Friends  
Service Committee**

**Due process for all:**

# **Promoting access to justice for immigrants in New Jersey**



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Rutgers Law School Immigrant Rights Clinic, UU FaithAction NJ, and  
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## SUMMARY

The detention and deportation of immigrants, many of whom are the financial and emotional support for their families, has serious negative impacts on families and communities across New Jersey and the U.S. When low-income families do not have access to competent immigration counsel, they cannot take advantage of the laws meant to protect them, and they often do not know if they have valid challenges to deportation.

This report shows the human cost of rising immigration arrests across the state and the impact that free, legal representation can have on keeping families together and fighting deportation alone.



Elizabeth Detention Center in Elizabeth, New Jersey



**American Friends  
Service Committee**



SETON HALL | **LAW**

Center for Social Justice





## Manuel\*

Manuel is a long-time resident of New Jersey and father of two U.S. citizen children. Manuel was arrested in April of 2018 by Immigration and Customs Enforcement (ICE) following two pending shoplifting charges. Despite having no convictions and having lived in New Jersey for over 15 years, the immigration judge set his bond at \$25,000. Unable to pay such an exorbitant amount, Manuel had to fight his case in detention. With the help of pro-bono legal representation, Manuel was able to provide sufficient proof of his long-term residence and support of his children. These facts, combined with the possible harm to his 17-year-old daughter who suffers from several mental illnesses, demonstrated that Manuel's family would suffer extreme and unusual hardship if he were deported to Mexico.

Manuel was granted a form of relief called cancellation of removal and is now a lawful permanent resident of the U.S. living once again with his family and working in New Jersey.

### CASE STORY no.1



\*Names have been changed in this publication to protect the identities of individuals who share their stories here. Photographs are not of those featured in these stories.



## Introduction

In 2018, 3,199 individuals were detained in New Jersey during deportation proceedings for civil immigration violations.<sup>1</sup> In 2015, two-thirds of immigrant detainees fought their cases without the help of a lawyer.<sup>2</sup> Deportation is one of the harshest penalties an individual can face under U.S. law. However, unlike people facing criminal charges and incarceration, immigrants in deportation proceedings who cannot afford a lawyer are often forced to defend their cases alone and remain detained for a long time. Immigration proceedings are incredibly complex, and few succeed in challenging deportation without a lawyer.

The need for legal representation at this moment is all the more urgent. In 2017, ICE arrests increased by 42 percent<sup>3</sup>, and the New Jersey immigration courts have one of the highest case backlogs<sup>4</sup> in the country with pending cases having nearly doubled since 2015.<sup>5</sup> During this period, average population in New Jersey detention centers also rose by 34 percent to 1,807 individuals a day.<sup>6</sup> Providing legal counsel is one of the most straightforward policy solutions to ensure due process and just treatment of immigrants and the efficient administration of our legal system.

The state of New Jersey is making an effort to ensure that detained immigrants in New Jersey receive a fair day in court. This year, the state included \$2.1 million in its FY2019 budget to provide appointed counsel to immigrants in detention and facing deportation. This funding is an encouraging first step toward a \$15.5 million goal to ensure that all detained immigrants in New Jersey have representation.<sup>7</sup>

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# Jonathan\*

## CASE STORY no.2

Jonathan is the 43-year-old spouse of a U.S. citizen and the stepfather to two U.S. citizen boys. He was detained and put into removal proceedings in Elizabeth, NJ. He has lived in New Jersey since 2000 and has supported his family as a self-employed landscaper and mechanic for many years. In addition to financial support, Jonathan cares for his wife, who suffers from severe and debilitating medical conditions. She relies on him every day; on days in which she has a flare-up of her diseases, she even relies on him for basic needs like food and going to the restroom. Jonathan has been the sole father figure to his two step-sons and has protected them from their abusive biological father for much of their life. Although Jonathan's wife is a U.S. citizen, he does not qualify for status through her because he travelled back to Mexico twice since he moved here – once to visit his terminally ill father and once to attend his funeral. Those two trips disqualify him from status through his wife. With the help of pro bono counsel, Jonathan has applied for cancellation of removal and was granted release from detention on bond to continue pursuing his case and taking care of his family.



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# Adama\*

## CASE STORY no.3

Adama fled his native Burkina Faso in December 2015 after his support for a pro-democracy political party resulted in his arrest, detention, and torture. He sought safety in America but was detained at the Elizabeth Detention Center in New Jersey upon his arrival into the United States. After spending almost one year in detention, with the help of pro bono and legal representation of an attorney from the Friends Representation Initiative of New Jersey (FRINJ) of the American Friends Service Committee, Adama was granted asylum and released from detention. He now works at a shelter and lives in East Orange, NJ, and petitioned to bring his wife and three children to safety in the United States.





Ensuring that there is due process in immigration courts is an important financial and moral responsibility to immigrant families and our communities across the state. Along with fully funding a public-defender style, universal representation program, state and local government should also take steps to eliminate the use of local resources to enforce increasingly harsh immigration policies and make sure that New Jersey does not profit from immigration detention.

## Sergio\*

### CASE STORY no.4

Sergio, from Guatemala, has resided in the United States for approximately 10 years, during which he has maintained steady employment, lived with his long-time partner, and fathered three U.S. citizen children. In August of 2018, Sergio was arrested by local police and charged with unlawful possession of a handgun. While the criminal court determined that he could be released on his own recognizance, upon release, he was detained by ICE and put into removal proceedings at Essex County Correctional Facility (ECCF).

While detained at ECCF, Sergio met pro-bono student attorneys from the Seton Hall Immigrants' Rights/International Human Rights Clinic, who represented him during bond proceedings. To be released on bond Sergio had to show that he was not a danger to the community, not a flight risk, and eligible for immigration relief. Sergio's attorneys helped demonstrate that he was a long-time resident with no prior encounters with law enforcement and who had a strong support network of family and friends in his community.

Because he was eligible for multiple forms of permanent immigration relief, Sergio's attorneys also argued that he was likely to attend all future court dates. Over the Department of Homeland Security attorney's argument that Sergio's bond be set no lower than \$7,500, his representation was able to obtain a bond amount of \$6,000.

Sergio is now reunited with his partner and three children and will be better able to pursue permanent relief from removal.





U.S. or abroad. In 2011, an estimated 5,100 children in foster care nation-wide had a deported or detained parent.<sup>11</sup> When immigrants have a fair chance to fight their cases with legal representation, they are more likely to win and keep their families intact. Annually, detentions and deportations cost New Jersey approximately \$732,000 in child health insurance and \$203,000 in foster care costs for children of detained or deported parents.<sup>12</sup>

Immigrants in New Jersey with lawyers are three times more likely to avoid deportation than those who were unrepresented, and more than four times as likely to apply for relief to regularize their status as those who have no attorney. Without legal representation, only 14 percent of immigrants detained throughout their proceedings are able to avoid deportation.<sup>13</sup>

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## Alexandra\*

Alexandra, a transgender woman, sustained a severe brain injury after a transphobic attack in New Jersey, which left her with severe cognitive difficulties and a large portion of her skull missing. Alexandra was detained at the Elizabeth Detention Center and then unlawfully deported to Honduras despite her fear of persecution. Pro bono counsel succeeded in compelling ICE to return her to the U.S., but ICE again detained her in the Elizabeth Detention Center. Pro bono counsel continued to represent Alexandra, which included gathering corroborating evidence from Honduras and securing a comprehensive cognitive and psychological examination completed by a medical professional. With this thorough report, pro bono counsel was able to document Alexandra's cognitive limitations and convinced the immigration judge to grant Alexandra protection and release because of the danger she would face in Honduras.

### CASE STORY no.5





# Isaac\*

## CASE STORY no.6

Isaac, a U.S. citizen, came to the United States with an immigrant visa as a 10-year-old boy in the late 1980s, accompanying his mother and siblings. He had been living in the United States for over 20 years as a legal permanent resident when he was placed in immigration custody following a Middlesex County arrest. Prior to his detention, Isaac had been a main source of financial support for his mother and younger sister, and the family was struggling to retain an immigration attorney. With the assistance of pro bono counsel, Isaac discovered that he had in fact acquired U.S. citizenship at birth through his maternal grandfather, who had been born in California. After counsel filed extensive documentation of records that dated as far back as 1923, the immigration judge agreed that Isaac was a U.S. citizen and terminated the removal proceedings against him. Isaac was able to reunite with his family and continue working and providing for them.



# Alex\*

## CASE STORY no.7

Alex is a former Deferred Action for Childhood Arrivals (DACA) recipient who grew up in the United States. He is married to a U.S. citizen, and they have two children. Alex is the sole provider for his family. In 2017, Alex was detained by immigration after his wife petitioned for him to obtain lawful permanent residency. Immigration authorities argued that recent travel and a juvenile conviction made him ineligible to get a green card, and they placed him in deportation proceedings. When Alex was detained, his wife was pregnant with their second child.

Alex's wife has since given birth and has had to use all of their family's savings to pay for an attorney. Alex and his family are unable to pay for further legal representation, and Alex continues to be detained, despite being eligible to renew his DACA. His wife, who has no legal training, filed a constitutional claim on her husband's behalf challenging his detention, since they could no longer afford to pay an attorney. With access to affordable representation, Alex could fight his case, finally meet his newborn child, and be reunited with his family. At the time of our initial publication of this report in March 2018, Alex was still detained and his wife continued to seek legal counsel.



# David\*

## CASE STORY no.8

David, originally from Uruguay, is a 20-year-old long-time New Jersey resident who has lived in the United States with his parents since age four, when he entered the country on a visa waiver program. In September of 2018, David was placed into ICE custody following an arrest in Morris County for violation of his probation on a prior misdemeanor marijuana offense. Although the Morris County judge determined that David could be released from county jail, he was detained by ICE and transferred to Essex County Correctional Facility. During his first appearance with immigration court, David plead guilty to having signed a visa waiver form when he entered the country as a child, putting him at high risk for deportation and leaving him with only a small chance of winning his case.

David is a graduate of Dover High School and former DACA recipient. David's community fundraised several thousand dollars to support legal fees for him, however it's still not enough to hire a private attorney to take his case.

Access to quality, pro-bono legal counsel would allow David to pursue options for release from detention, give him the chance to continue fighting his case from home, and ultimately improve his chances of being deported to a country he doesn't know.





## CONCLUSION

Elected leaders at the state and local level across the United States are stepping up to address the due process crisis in our immigration courts.

In November 2013, New York City launched the New York Immigrant Family Unity Project, a public defender-style program for residents that guarantees access to counsel for detained immigrants who could otherwise not afford a lawyer. Since the program's inception, immigrants' chances of winning their cases have increased by as much as 1,100 percent and the program has been expanded statewide.<sup>14</sup> Seattle, Los Angeles, San Francisco, Chicago, Boston, and now the State of New Jersey are launching similar universal representation projects for detained immigrants.

## ENDNOTES

<sup>1</sup> Analysis of Transactional Records Access Clearinghouse (TRAC) at Syracuse University on Details on Details on Deportation Proceedings in Immigration Court by Custody, Representation, Location, Entry Year, and Current Status. <http://trac.syr.edu/phptools/immigration/nta/>

<sup>2</sup> Lori A. Nessel, Farrin Anello, & Working Group on Immigrant Representation in New Jersey, *Deportation Without Representation: The Access-to-Justice Crisis Facing New Jersey's Immigrant Families* (2016). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2805525](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2805525).

<sup>3</sup> Heyboer, Kelly. "ICE arrests surging in N.J. under Trump. Here's why." NJ.com, February 20, 2018, available at: [http://www.nj.com/news/index.ssf/2018/02/ice\\_arrests\\_surge\\_under\\_trump\\_see\\_where\\_nj\\_ranks.html](http://www.nj.com/news/index.ssf/2018/02/ice_arrests_surge_under_trump_see_where_nj_ranks.html)

<sup>4</sup> Sherman, Ted. "Why New Jersey's immigration court has one of the highest backlog of cases in the nation," NJ Advance Media, available at: [http://www.nj.com/news/index.ssf/2017/03/in\\_immigration\\_court\\_time\\_moves\\_slowly.html](http://www.nj.com/news/index.ssf/2017/03/in_immigration_court_time_moves_slowly.html)

<sup>5</sup> Analysis of Transactional Records Access Clearinghouse (TRAC) at Syracuse University on Immigration Court Backlog. Data used FY15-FY18.

<sup>6</sup> Total average daily population in FY2017. DHS-compiled data in ICE detention facilities as of November 2017.

<sup>7</sup> Estimated cost of providing a lawyer for around 2,140 detained cases in New Jersey at \$7000 per case.

<sup>8</sup> New American Economy, *The Contributions of New Americans in New Jersey* (New York, NY: August 2016), 7. <http://www.newamericaneconomy.org/research/the-contributions-of-new-americans-in-new-jersey>.

<sup>9</sup> Nava, Erika J. *Legal Representation in Immigration Courts Leads to Better Outcomes, Economic Stability*. June 2018. <http://www.njpp.org/wp-content/uploads/2018/06/NJPP-Universal-Legal-Representation-Report-June-2018.pdf>

<sup>10</sup> American Immigration Council, *New Americans in New Jersey: The Political and Economic Power of Immigrants, Latinos, and Asians in the Garden State 1* (2013). [www.immigrationpolicy.org/sites/default/files/docs/new\\_americans\\_in\\_new\\_jersey](http://www.immigrationpolicy.org/sites/default/files/docs/new_americans_in_new_jersey)

<sup>11</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Consortium for Latino Immigration Studies (Nov. 2011). [www.sph.sc.edu/cli/word\\_pdf/ARC\\_Report\\_Nov2011.pdf](http://www.sph.sc.edu/cli/word_pdf/ARC_Report_Nov2011.pdf)

<sup>12</sup> *ibid* 9.

<sup>13</sup> *ibid* 2.

<sup>14</sup> Vera Institute of Justice. *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity*. November 2017. <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>