



SAN DIEGO COUNTY IMMIGRANT RIGHTS LEGAL DEFENSE PROGRAM ANNUAL REPORT

San Diego County Public Defender Office of Assigned Counsel and
Public Safety Group Executive Office

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Executive Summary

This executive summary provides an overview of the Immigrant Rights Legal Defense Program's (IRLDP) first 15 months of operation from April 2022 to June 2023. Initiated by the San Diego County Board of Supervisors, the IRLDP offers legal representation to detained immigrants facing removal proceedings or deportation. This report covers key program aspects, including client data, immigration court processes, program costs, lessons learned, and success stories.

Many immigrants facing removal, deportation or seeking asylum do not have access to legal representation. The IRLDP was initiated in May 2021 with the primary objective of providing legal representation to immigrants in custody facing removal proceedings. This initiative addresses the challenges of complex immigration law, high legal fees, and lack of representation that many immigrants encounter. Represented immigrants have a better chance of obtaining relief and can better navigate the legal process.

The Public Defender's Office of Assigned Counsel (OAC) launched the program in April 2022. The IRLDP includes an Advisory Panel of local immigration attorneys, regional immigrant rights directors, and county office representatives. This Advisory Panel has educated and guided the program from creation to operation and members meet regularly with the Legal Coordinator to enhance procedures based on immigration law trends. IRLDP collaborates with contracted non-profit organizations and 23 panel attorneys to provide merits-blind representation, meaning it offers representation to indigent, detained and unrepresented immigrants who otherwise would not have access to an attorney, without first screening for whether a case is likely to succeed or fail on its merits. During the 15-month period, the program witnessed a significant increase in clients, with intakes exceeding 800 and continuing to rise. As the program expands, more skilled attorneys will be contracted as needed.

The immigration court process involves several stages: DHS issues a Notice to Appear (NTA), followed by master calendar hearings, individual merits hearings, and potential appeals. The IRLDP assists clients throughout these stages, including securing release from detention through bond or parole.

Data collection has been a critical aspect of the program's operation. Despite challenges, the program has gathered substantial information on client demographics, case outcomes, detention levels, and applications for relief. The report highlights demographic trends, language preferences, and outcomes of various relief applications.

The IRLDP has contributed to an increase in representation for detained clients in the San Diego and Otay Mesa Immigration Courts. The report presents data from the federal Executive Office for Immigration Review (EOIR) indicating improved representation rates for detainees.

Financially, the IRLDP's total program costs for the covered period amounted to \$1,691,868. The report provides insights into cost projections, funding structure, and anticipated annual program costs.

Throughout its operation, the IRLDP has encountered challenges, providing valuable lessons. These include the need for early representation, the importance of adapting to the immigration legal landscape, and the scarcity of qualified immigration attorneys. Additionally, the slow pace of immigration proceedings and evolving data collection practices have informed the program's development.

In conclusion, the IRLDP has made significant strides in its mission to provide legal representation to detained immigrants facing removal proceedings. The report highlights achievements, challenges, and lessons learned during the program's first 15 months, setting the stage for ongoing improvements and future success.

Introduction to Immigrant Rights Legal Defense Program (IRLDP)

This report presents an overview of the Immigrant Rights Legal Defense Program's (IRLDP) operational activities during its initial 15 months, spanning from April 2022 to June 2023. Established in response to a directive from the San Diego County Board of Supervisors (Board), the program operates under the auspices of the San Diego Public Defender's Office of Assigned Counsel (OAC). Its purpose is to offer legal representation to detained immigrants who are confronted with removal proceedings or deportation. The report outlines key data points and insights concerning program clients, the local immigration court system, costs, and engagement with the program's intake phone line. The lessons gleaned from this period serve as a foundation for refining program design and objectives moving forward. The IRLDP seeks to address the challenges faced by immigrants without legal representation in complex immigration proceedings and the associated implications for both individuals and their communities. The report delves into the details of the program's operation and its impact on the immigration landscape.

The Immigration Legal Process

Immigration removal proceedings are conducted by the US Department of Justice's Executive Office for Immigration Review (EOIR). Department of Homeland Security (DHS) charges a migrant (respondent) with violating immigration laws, and EOIR decides whether the respondent is removable from the country and if they qualify for relief from removal. A typical experience will include the following steps, and IRLDP attorneys can become involved prior to or during the process.

1. DHS serves a respondent with a **Notice to Appear (NTA)** and files it with EOIR. The NTA includes information on charges of removability and initial hearing information.
2. An EOIR judge holds an initial hearing called a **master calendar hearing** where the judge explains the respondent's rights, addresses allegations, and addresses representation. Like an arraignment in criminal court, the respondent may plead to the allegations and indicate whether they wish to apply for protection or relief from removal.
3. The master calendar hearing judge will schedule an **individual merits hearing/trial** where the respondent and DHS will present their case to the court. At the conclusion a judge may grant relief from removal or issue an order of removal.
4. Both DHS and the respondent have 30 days to request an appeal from the **Board of Immigration Appeals (BIA)** following a merits hearing. The respondent can appeal BIA decisions to the Federal Fourth District Court of Appeals.

During or prior to any of the steps above, DHS may detain an individual through Immigration and Customs Enforcement (ICE). IRLDP attorneys assist clients in securing release from detention via bond, release on their own recognizance, or parole.

Clients Connect to Immigrant Rights Legal Defense Program Through the Office of Assigned Counsel

In April of 2022, the OAC established an intake telephone line to connect clients to IRLDP. The line is staffed by intake coordinators employed by the Public Defender's Office. OAC has received 3,526 calls and receives an average of 19 calls per day from a mix of new clients, updates, and miscellaneous calls. Most calls to the OAC intake line come from the Otay Mesa Detention Facility from detainees calling on behalf of themselves. Families of detainees are the next highest group. Other calls come from attorneys, immigration community-based organizations, or other advocates. Calls last anywhere from seven to 30 minutes depending on who is calling and if translation is required.

The IRLDP was established with the goal to provide universal, merits-blind representation and break the model of intensive case-screening that is prevalent in the immigration pro-bono representation community. Cases are only pre-screened for the custodial eligibility requirement and not evaluated on the merits or chances for success of the case.

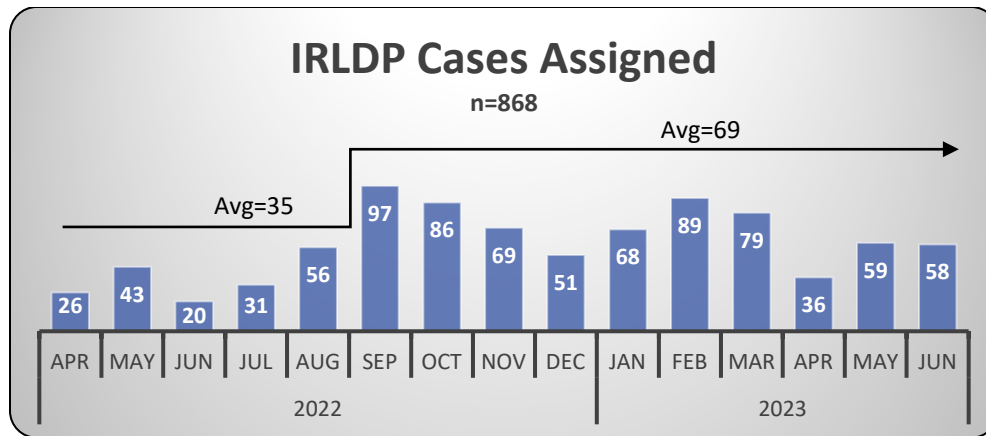
The intake process includes the following steps.

- Intake coordinators find as much information as they can at each intake although frequently there is not a lot of information.
- Intake information is sent to the head of OAC/Program Legal Coordinator for review.
- If custodial eligible, cases with upcoming dates are prioritized and all cases are assigned within a week.
- Attorneys are offered the case and receive brief case information.
- Once the attorney accepts the case it is assigned.
- If the attorney is unable to accept the case, it goes to the next attorney in line.

Client Intake Has Increased Over Time

A total of 868 intakes occurred between April 2022 and June 2023. Some clients find non-program attorneys or leave the program before case data can be recorded. There is also a lag between when a client goes through intake and when outcome data is recorded. As a result, intakes will be larger than the total clients represented mentioned in other sections of this report.

Figure 1 shows how intakes fluctuated from month to month during the first year of the program with a noticeable increase after August 2022. The program started with 26 intakes in April 2022. The highest number of intakes occurred in September 2022 at 97 and the lowest in June of 2022 at 20. Over the first 15 months of the program, average intakes per month was 58. The average number of intakes per month from April through August 2022 was 35 and increased to 69 between September 2022 and June 2023. The increase coincides with the increase in the program's addition of contracted panel attorneys and case capacity around the same time. Because cases generally take a long time to work their way through the immigration court legal process with infrequent hearings and case events attorneys have so far managed the program's continuous intakes and increasing caseloads. However, there may be a point at which monthly intakes would need to be capped or reduced. This would only happen if currently contracted attorney caseloads reached capacity and OAC cannot find and enroll additional immigration attorneys.



*Panel attorneys joined the program in July 2022

Figure 1. Cases assigned to attorneys by the Office of Assigned Counsel between April 2022 and June 2023.

Client Outcome Data

As part of the program, contracted and panel attorneys are required to provide outcome data regarding their cases. This includes countries of origin, demographic data, relationship and dependent information, languages spoken and interpreted, grounds of inadmissibility/deportation (charges), client custody and bonds, employment and family outcomes, substantive case outcomes, and applications for relief. Client outcome data is reported for 782 clients with cases opened from April 2022 through June 2023.

Staff made efforts to standardize the data collection and make information gathering easy for program attorneys. However, the program experienced the following limitations in its data collection. Data on outcomes is not always complete due to the data being self-reported by the clients to the attorneys. Due to privacy considerations EOIR provides de-identified information on client cases. Clients and attorneys often do not have access to historical information on their cases. Clients may be uncomfortable sharing employment and other information with their attorneys. Attorneys also only have limited time to meet with their clients initially and while they are in detention, so some outcome information may not be recorded. Clients may also leave the program through changes of venue, a new attorney taking over the case, a removal order, or simply discontinuing work with the attorney. Once a client leaves the program, obtaining information from them may be difficult or impossible. Whatever the reason for missing data, data gaps are noted in the following sections and will serve as lessons learned for future data collection.

Client Countries of Origin and Demographics

Figure 2 shows the two most common countries of origin were Colombia and Mexico, accounting for 14% and 13% of clients. The most common racial/ethnic group was Hispanic or Latino at 56% of clients. Most of the clients were male at 75%. Most clients were between the ages of 22 and 39 (59%) when their case was opened by an IRLDP attorney. Thirteen percent were age 21 or under. The median number of days between entry to the US and case opening was 65.

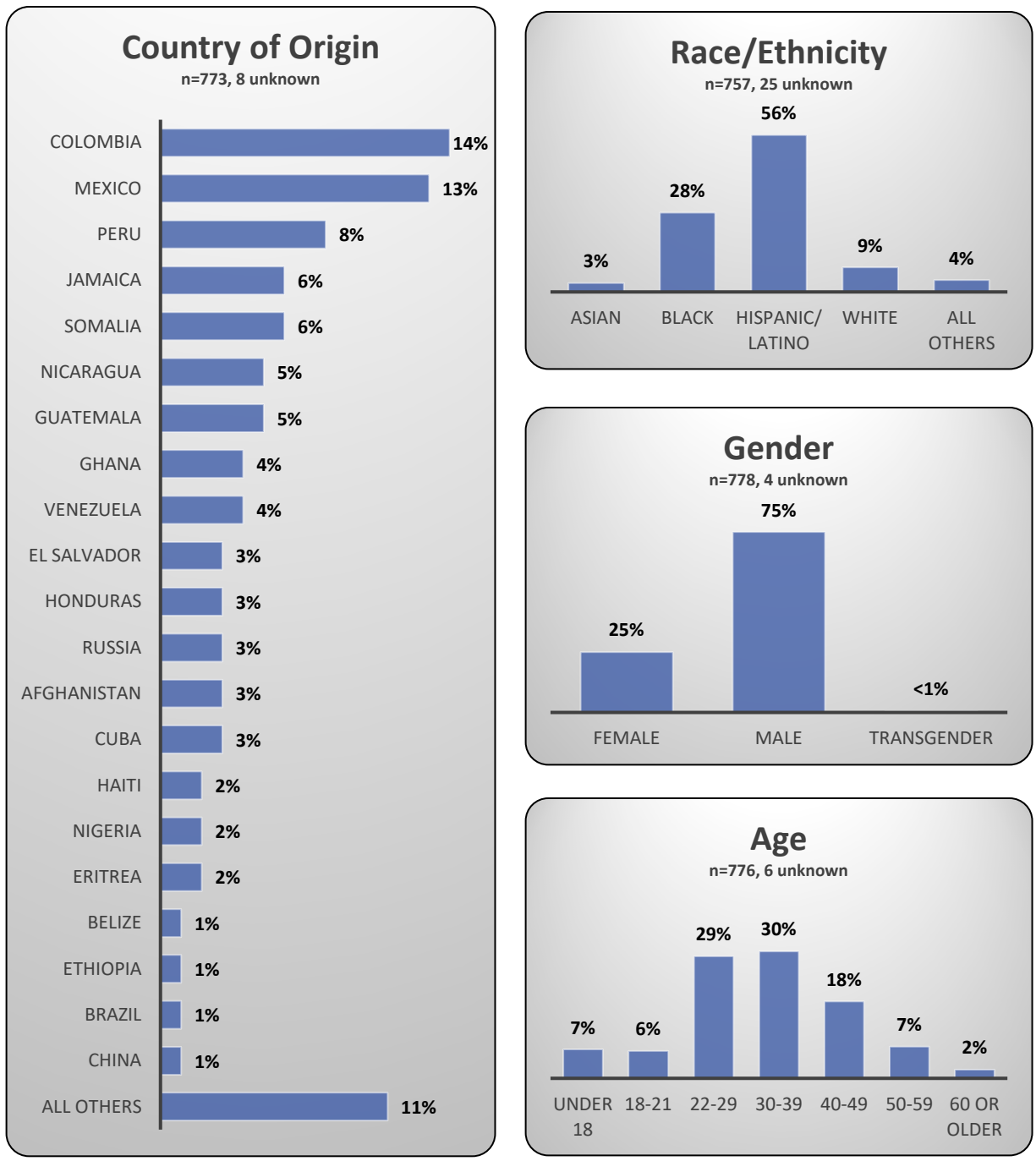


Figure 2. Client countries of origin, race/ethnicity, gender, and age group.
 * All Others includes all clients identified as "other" or the number of individuals represented was fewer than 1% of the total.

Family Situations

Figure 3 shows most clients utilizing IRLDP services were single and had no dependents. Seventy percent of clients reported being single, including those divorced, separated, or widowed and 30% reported being married or in a domestic partnership. Forty percent reported having dependents. Multiple individuals' cases can be consolidated into a single case in immigration court. This occurs most often in cases involving immediate family members. For this report, we consider each client as a separate case, but asked the

attorneys to indicate if a case had a lead rider or consolidated case with family members or more than one individual. Attorneys indicated 29 unique lead rider cases.

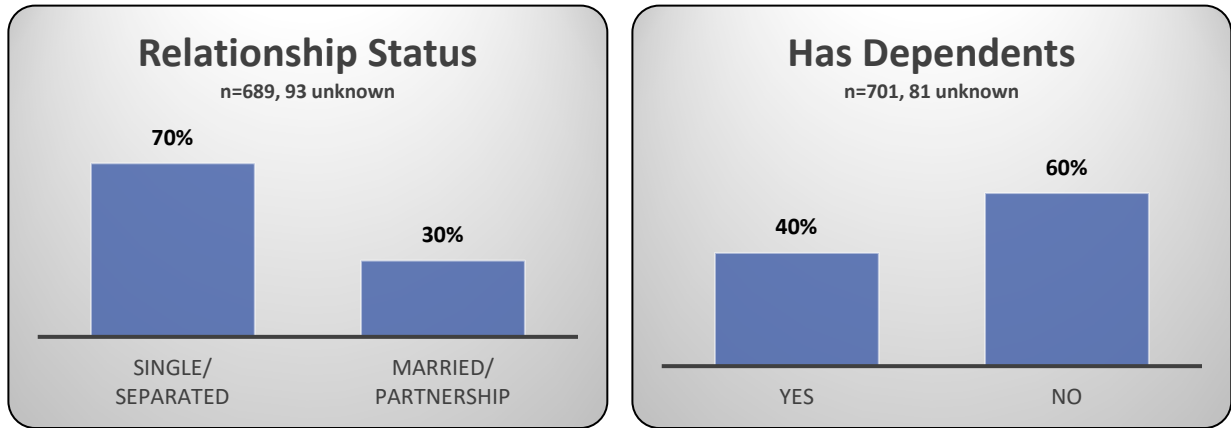


Figure 3. Client relationship status and dependents.

Languages Spoken and Interpreted

Clients speak 62 different primary languages. Figure 4 shows that 54% of IRLDP clients spoke Spanish as their primary language. The next most common spoken language was English at 16% of clients. Seventy-seven percent reported having a language interpreted with Spanish being the most common language.

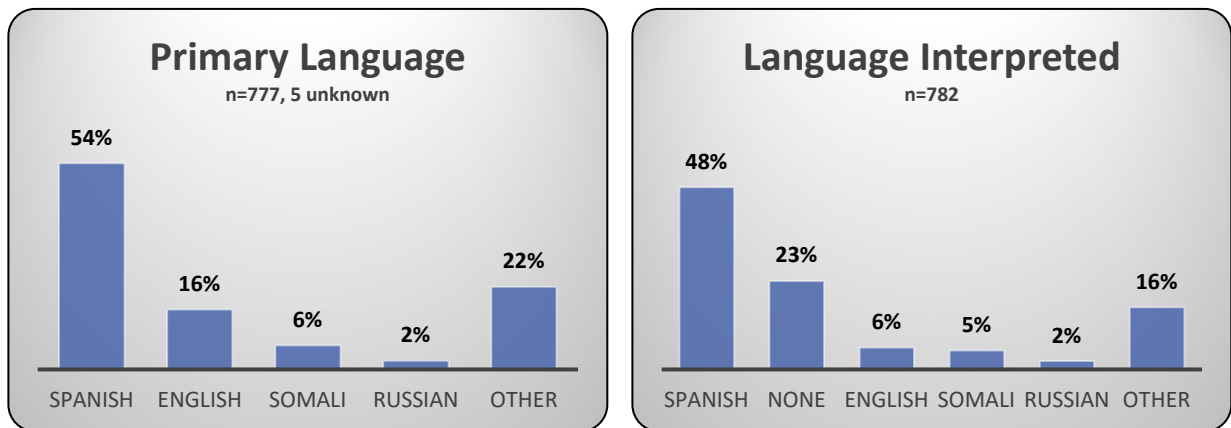


Figure 4. Client languages spoken and interpreted.

Grounds of Inadmissibility or Deportation

When clients enter the US without authorization and removal proceedings are initiated, they are provided a notice to appear (NTA) in immigration court. The NTA includes grounds of inadmissibility to the United States or deportation, like charges in criminal court. Some clients in our program have not received a NTA because they have not entered removal proceedings if for example, they are applying for some sort of relief like asylum. Also, clients may not have access to their NTA because they have misplaced it, or they reentered the country and are fighting a reinstatement of a previous removal order. Because clients can have more than one charge, Table 1 reflects the percentage of cases included in the charge category listed and will not constitute a one-to-one relationship with the total number of cases.

When charge information was available, most clients received a charge of illegal entry or entry without possession of valid documents. Migrants who commit certain crimes may be ineligible to enter or remain in the United States. Five percent of clients have charges related to criminal activity. The charges related to criminal activity are spread among 34 clients.

Table 1. IRLDP Client Charges in Immigration Court, April 2022 – June 2023

Charge category	Clients	% of Clients
212(a)(6)(A)(i) - Illegal entrants and immigration violators	469	65%
212(a)(7)(A)(i) - Not in possession of valid, unexpired documents	240	33%
Charges related to criminal activity	34	5%
Other	46	6%
Pre-NTA or no charge	60	8%
Total clients	722*	

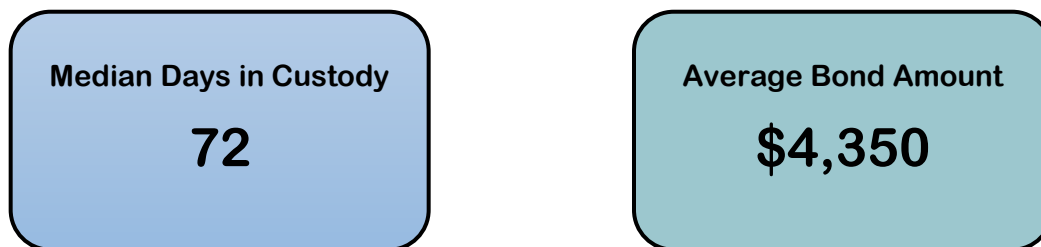
Missing data on client charges

60

**Total clients from each category adds up to more than 722 because clients can have charges in more than one category.*

Client Custody and Bonds

Most IRLDP clients serve time in custody or are subject to monitoring in the community known as Alternatives to Detention. Complete client custody and ATD information is not available for all clients because clients do not always know their custody dates, the attorney is unable to access the information, or the client stops being served by the attorney while detained. Entrance and exit days were known for 425 of 468 clients reported released from detention. For these 425 clients, the median length of stay for clients released from custody was 72 days.



Clients are sometimes granted release from custody on bond while their case is pending. Attorneys reported 47 clients with bonds greater than zero dollars. The average bond amount was \$4,0351, the highest, \$15,000, and the lowest, \$1,500.

To understand a client’s detention profile, attorneys select a detention category for each client known as the highest detention level. If a client is detained without release while their case is open and never released until closure, they are classified as detained. Clients released from detention were classified as released from detention. If a client was placed on ATD but never detained in physical custody, then they were classified as ATD only. If a client is part of a consolidated case and not detained or placed on ATD then, they are categorized as a rider case. Finally, clients who are never detained, placed on ATD, or part of a consolidated case are identified as having no associated detention or ATD. Categorizing clients this way allows for an at-a-glance understanding of the type and level of detention received while part of the program. Figure 5 illustrates the highest detention level categories.

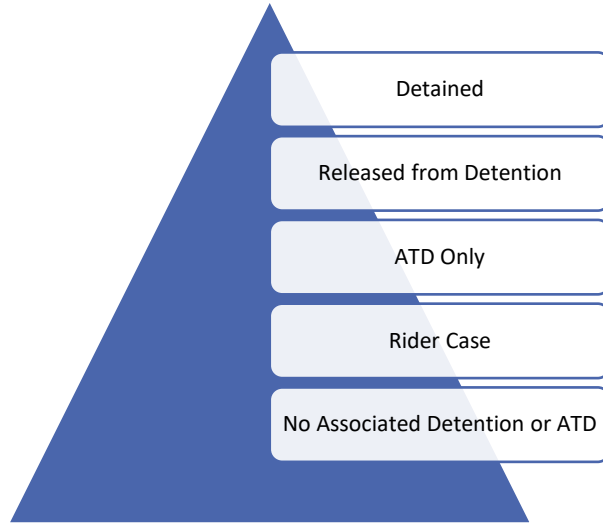


Figure 5. An illustration of the highest detention level from most confinement to least confinement.

Attorneys provided the highest detention level for 772 clients in IRLDP. Information was missing for 10 clients. Table 2 provides the distribution of the highest detention level among clients. Cases are broken into open and closed cases to recognize that once a case is closed client information is limited. For instance, if a client is released after their case is closed by the attorney, they are classified as detained.

Table 2. Highest Detention Level for IRLDP Clients, April 2022 – June 2023

Highest Detention Level		Clients	% of Clients
Open Cases	Detained	110	14%
	Released from detention	176	23%
	ATD only	80	10%
	Rider case	2	<1%
	No associated detention or ATD	1	<1%
	Total clients: open cases	369	48%
Closed Cases	Detained	95	12%
	Released from detention	292	38%
	ATD only	14	2%
	No associated detention or ATD	2	<1%
	Total clients: closed cases	403	52%
Total clients		772	100%

Missing data on highest detention level 10

Clients Released from or Never Placed in Detention

Of the 772 clients with reported detention information, 567, or 73%, were reported as released from or never placed in detention while their case was pending. This includes clients who were placed on ATD only.

As Figure 6 illustrates, 53% of clients who spent time in the community reported living with family while their case was pending. For employment, 22% of clients reported being employed while their case was pending.

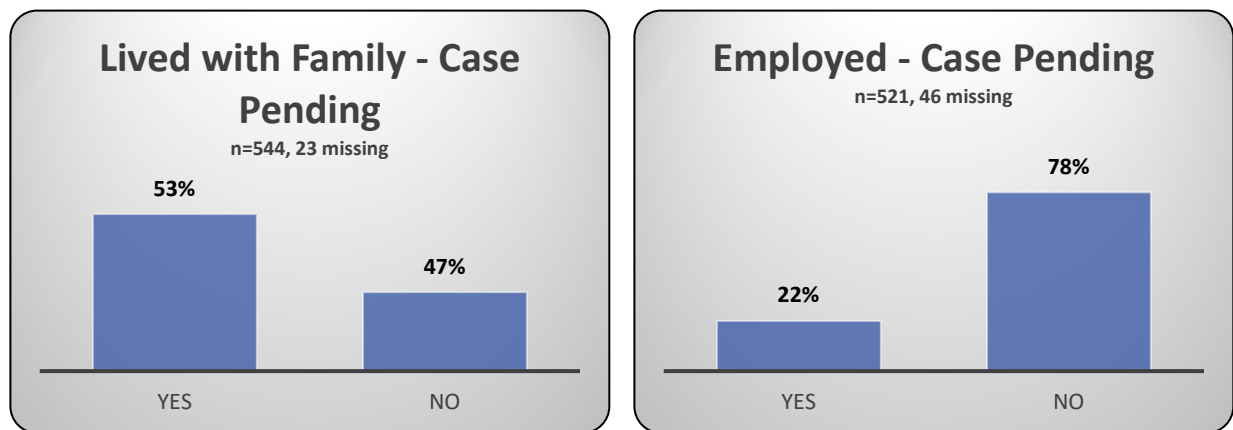


Figure 6. Clients may live with family or are employed while their case is pending.

Substantive Outcomes and Case Closures

Program cases resolve in numerous ways. Substantive outcomes on cases include situations where relief was granted, or temporary relief was granted allowing someone to stay in the US. Cases can also result in the Immigration Court dismissing charges or terminating the case, allowing someone to stay in the US. A case can result in an order of removal, voluntary departure, or a withdrawal of application for admission. Many cases in the program have not resolved yet or are closed without a clear resolution; they are either open with an outcome still pending or have been closed through a change of venue or some other closure. See the appendix for more detailed definitions of case outcomes.

- Administrative Closure - Cases in which an Immigration Court judge decides not to deport the individual for other unspecified reasons or closes the case administratively or because of the failure of the government to prosecute the case.
- Case Dismissed - Cases in which the government declines to pursue charges against an individual in removal proceedings.
- Case Terminated - Cases in which an Immigration Court judge finds the charges against the individual are not sustained and "terminates" the case. Situations where the client has established eligibility for naturalization can be grounds for termination.
- Order of Removal - Cases in which an Immigration Court judge sustains the charges against the individual and issues a removal order. The term "removal" is used in a generic sense and includes orders of deportation, exclusion, etc. A removal order bars the individual from returning to the US for a period of years, or in some cases permanently.
- Relief Granted - Cases in which an Immigration Court judge finds the original charges are sustained but finds provisions in the immigration law entitle the individual to "relief" from removal, allowing them to remain in this country. This is also used when an application is successful.
- Voluntary Departure - Cases in which an Immigration Court judge sustains the charges against the individual and issues an order of voluntary departure. A so-called "voluntary departure" is when the individual is required to leave the country but is not legally barred from returning.

- **Withdrawal of Application for Admission** - An option that US Department of Homeland Security might offer to an “Arriving Migrant,” whereby the migrant chooses to withdraw his or her application to enter the United States, and immediately departs the United States (or pre-clearance port of entry). Unlike an order of removal (including expedited removal as well as orders obtained because of removal proceedings), a withdrawal of application for admission does not create a bar to future entry.

Table 3 provides a summary of substantive outcomes and closures for cases opened from April 2022 through June 2023. Forty percent of cases were still open and do not have any substantive outcomes. Thirty-two percent of cases were closed without a substantive outcome including attorney withdrawing from the case due to change of venue or other reasons, client request, and clients being ineligible for representation. A substantive outcome occurred in 28% of cases. The most common outcome was having an order of removal issued (10%) followed by relief granted (7%).

Table 3. Pending Cases Substantive Outcomes and Case Closures, April 2022 – June 2023

Outcome or Closure Reason	Clients	% Of Clients
Case pending outcome or closure	310	40%
Pending: Not continued	205	26%
Pending: Continued	105	13%
Substantive outcome	220	28%
Order of Removal	77	10%
Relief Granted	58	7%
Case Terminated	31	4%
Case Dismissed	24	3%
Administrative Closure	16	2%
Withdrawal of Application for Admission	6	1%
Voluntary Departure	5	1%
Client Self-Deported	3	<1%
Case Closure	252	32%
Attorney Withdrew (Change of Venue)	165	21%
Attorney Withdrew (Other)	33	4%
Client Request	15	2%
Ineligible for Representation	1	<1%
Other Closure	38	5%
Total Clients	782	100%

Applications for Relief

Clients may seek relief proactively, in a process distinct from court proceedings initiated by EOIR, based on valid reasons for staying in the US, such as asylum or temporary protected status. When a client and their attorney believe they qualify, they can apply for an appropriate application for relief. A client may be eligible for and be granted multiple forms of relief. For cases opened from April 2022 through June 2023, attorneys reported 22 applications granted, 7 of which remain open. Twenty-one applications were

denied and four were withdrawn. It should be noted that an attorney may not ever learn the status of an application if a case is closed prior to an outcome or if another order or application supersedes the application. For instance, a person could apply for asylum but never receive an answer prior to an order of removal. Table 4 breaks down the types of applications applied for and the results of the applications. Applications for relief are defined in the appendix.

Table 4. Applications for Relief for IRLDP Clients, April 2022 – June 2023

Case Status	Application	Granted	Denied	Withdrawn	Pending	Total
Closed	Asylum/Withholding/Convention Against Torture	9	9	4	104	126
	Cancellation of Removal Special Rule				1	1
	EOIR 42A Legal Permanent Resident Cancellation of Removal	1	1			2
	EOIR 42B Non-Legal Permanent Resident Cancellation of Removal	1				1
	Temporary Protected Status (TPS)				1	1
	U Visa				2	2
	Withholding Only	2	7		6	15
Closed Total		13	17	4	114	148
Open	Adjustment of Status				10	10
	Asylum/Withholding/Convention Against Torture	7	3		104	114
	Cancellation of Removal Special Rule				1	1
	EOIR 42A Legal Permanent Resident Cancellation of Removal		1			1
	EOIR 42B Non-Legal Permanent Resident Cancellation of Removal				2	2
	I 130 Petition for Alien Relative	1			2	3
	Special Immigrant Juvenile Status (SIJS)	1			2	3
	Temporary Protected Status (TPS)				5	5
	Withholding Only				2	2
Open Total		9	4		128	141
Total Applications		22	21	4	242	289

Credible/Reasonable Fear

When a client seeks asylum or withholding of removal, they are required to undergo a credible or reasonable fear interview. With credible fear, the client has a believable fear of prosecution or torture upon return to their home country. With reasonable fear, there is a reasonable possibility that the client would be prosecuted or tortured in the country of removal. The standard is higher in reasonable fear interviews because the client has previously been removed from the United States. Between April 2022

and June 2023 immigration officials issued 57 fear decisions for IRLDP clients with 33 or 58% resulting in an affirmed credible or reasonable fear.

Immigration Proceedings in San Diego County: Executive Office for Immigrant Review Public Data

EOIR releases data from their case management system to the public with monthly updates (Executive Office for Immigration Review 2023). The data allows the public to view and analyze de-identified case data from immigration cases across the country. The data includes information on case volumes, detention history, and client representation. Table 5 displays EOIR data for clients involved in proceedings at San Diego or Otay Mesa Immigration Court between April 2022 and June 2023, compared to the same period in 2021 and 2022. The table shows that detained cases decreased from 56% to 45%.

Table 5. EOIR San Diego and Otay Mesa Removal Cases by Detention Status

Detained Case	Apr 2021 - Jun 2022		Apr 2022 - Jun 2023	
	Cases	%	Cases	%
Yes	11,767	56%	9,085	45%
No	9,399	44%	11,141	55%
Total	21,166	100%	20,226	100%

Table 6 displays EOIR data for detained clients with representation in proceedings at San Diego County or Otay Mesa Immigration Court between April 2022 and June 2023, compared to the same period in 2021 and 2022. Between April 2022 and June 2023, 42% of detained clients had an attorney on record. During the same period in 2021 and 2022, 25% of the over 11,700 of detained clients had an attorney on record. While the increase in representation cannot be solely attributed to IRLDP, the program is likely partially responsible.

Table 6. EOIR San Diego and Otay Mesa Removal Cases with Detained Clients by Representation Status

Represented	Apr 2021 - Jun 2022		Apr 2022 - Jun 2023	
	Cases	%	Cases	%
Yes	2,968	25%	3,822	42%
No	8,799	75%	5,263	58%
Total	11,767	100%	9,085	100%

Program Costs and Projections

From April 2022 through June 2023, IRLDP's total program costs were \$1,691,868 with an average monthly expenditure of \$140,989. Full program costs will be better known as the program continues and more cases are completed and paid in full. The program makes payments by case milestones that have long periods of time between them, so costs fluctuate month to month, and complete costs for an individual case are only realized when a case is closed. The OAC's current best estimates reflect an average cost per case of \$7,150 for cases that go through trial at immigration court and \$1,729 for cases with an early

disposition. The OAC estimates that annual program costs could be between \$4,390,932 and \$5,040,000. More precise estimates will be possible as more cases are completed, and as we gain more knowledge of the nature of immigration cases. According to data from Transactional Records Access Clearinghouse (TRAC) at Syracuse University, the average completion time for cases completed in San Diego Immigration Court with representation was 693 days in Fiscal Year 2022-2023 (through June 2023) and 966 days in Fiscal Year 2021-2022 (Transactional Records Access Clearinghouse 2023).

Lessons Learned from the First Year of IRLDP

Many lessons were learned about operating an immigrant legal defense program, data collection and reporting, and the immigration legal landscape. The following is a summary of these lessons learned, changes made throughout the process and recommendations for continuing the program.

Lessons Learned While Operating the Program

The IRLDP was embedded in the Department of the Public Defender due to the experience of the Office of Assigned Counsel (OAC) working with contract attorneys for client representation. However, the practice of immigration law differs from that of indigent criminal representation and through the assistance of the program's formal advisory panel and conversations with other practicing immigration attorneys, EOIR immigration judges and court executives, immigration programs state-wide, and immigrant rights community-based organizations, staff quickly learned which OAC practices would work in representing custodial immigrants in removal proceedings.

The IRLDP's advisory panel was formed to educate and advise the program and its Legal Coordinator throughout its creation and the establishment of program procedures. It consists of various immigrant rights stakeholder groups throughout the region, including members of the American Immigration Lawyers Association (AILA) who practice immigration law locally and are aware of court and detention facility procedures; directors of immigrant rights organizations at the border and throughout San Diego County; and employees from other county offices like the Office of Immigrant and Refugee Affairs and the Office of Evaluation, Performance and Analytics. The advisory panel has remained intact beyond program formation and meets regularly with the Legal Coordinator to discuss immigration law trends and refine program procedures.

One lesson learned was how we find clients for representation. We intended to have attorneys attend the initial immigration court hearing known as a master calendar hearing. However, we quickly learned that much occurs prior to the first master calendar hearing, and even prior to the filing of a Notice to Appear (NTA) which requires attorney representation. Immigration clients requesting asylum, prior to the filing of a case and before going to court, are interviewed by a DHS asylum officer in what is known as a Credible Fear Interview (CFI). Immigrants have the right to have an attorney present at the CFI to assist them in answering these questions, which then forms the basis of a finding by the asylum officer and is relied upon as the record by the Immigration Judge for review. Being oriented by an attorney and/or their presence at a CFI typically makes all the difference in securing a positive finding by the DHS asylum officer. It, therefore, became imperative to assign program attorneys to cases long before a NTA was filed, and prior to immigration court proceedings.

The IRLDP undertook a request for proposal (RFP) and reviewed several bids to begin the program by contracting with non-profit immigration agencies established locally in the pro-bono representation of immigrants in removal proceedings. The county selection team chose three proposals and entered

contracts with the Immigration Justice Project, the Southern California Immigration Project, and Jewish Family Service – San Diego to provide removal proceedings representation.

Initially, the capacity of the non-profits and rate of program case assignments was far less than the demand for services. This necessitated a transition to the “hybrid model” almost immediately, with the program services provided both by the nonprofits and firms identified through the competitive bidding process and through a panel of individual attorneys in direct agreements with OAC based on their individual qualifications and paid a standard rate. Initially the intent was to consider and transition to the “hybrid model” of contracted firms and individual panel attorneys after 6-12 months, depending on capacity needs. However, the capacity of the three non-profits made the transition an immediate priority. With the knowledge and infrastructure of contracting with private criminal practitioners, OAC was able to build, recruit and establish an immigration contract attorney panel in less than three months. As the numbers cited and graphed above indicate, the program took off in August and September of 2022, with a dramatic increase in case assignments and client representation.

The way cases were assigned also changed with the establishment of the “hybrid model” and the immigration attorney panel. OAC hired a dedicated immigration case intake coordinator to internally receive client phone calls and referrals. The referrals now come directly to OAC and OAC then assigns cases out to attorneys to meet with their custodial or ATD clients for representation. Advertising of the program also transitioned to getting the OAC referral line phone number out to the detention facilities, EOIR, the County Office of Immigrant and Refugee Affairs, community-based organizations, and other stakeholders.

Another lesson learned, is the slow pace by which immigration court removal proceedings progress through the system and EOIR. A custodial immigration client can take 4-6 months on average to progress through their immigration removal proceedings. If the client is released on bond or into an Alternative to Detention Program, then the merits hearing trial can be continued even further beyond 12-18 months.

This long, slow nature of immigration proceedings presents a challenge in various ways. First it becomes difficult to make cost projections since cases take a long time to be paid in full. With a milestone payment structure, as cases and hearings are continued, attorneys cannot bill for the work on the case that’s yet to come. Second, attorney caseloads continue to grow as new cases come in, but few are completed due to the slow court process and continued hearing dates. Caseloads grow but without a large sample of completed cases, it is unclear at this time what the correct “caseload” per attorney should be. As caseload numbers grow, it also creates a need for a constant search and recruitment of new lawyers to add to the panel.

Another lesson is the limited pool of qualified immigration attorneys in San Diego County. As the program Advisory Panel confirms, the number of qualified immigration attorneys in the region is limited. And even more limited when it comes to our specific needs, is the representation of custodial immigrants in removal proceedings and their appellate rights to the Board of Immigration Appeals and the Federal Fourth Circuit Court of Appeals. Our program handles the most complex of immigration law proceedings and issues in removal proceedings. Many attorneys only practice in affirmative applications in the United States Citizenship and Immigration Services (USCIS) but are not well versed and experienced in representing individuals in EOIR immigration court and/or in custodial removal proceedings. The IRLDP is collaborating with the University of San Diego Law School Immigration Clinic by adding its adjunct professors to the attorney panel and gaining the assistance of the law student clinic. This collaboration is also designed to

promote the field of immigration law locally and alleviate the shortage of fully qualified immigration practitioners.

The lifting of Title 42 in May of 2023 was at the forefront of much County planning as to how to deal with the anticipated influx of migrants and asylum applicants at our border. Initially, the IRLDP was not heavily involved since as a custodial program, many of the anticipated non-detained individuals would not be eligible for program representation. However, when the U.S. Customs and Border Protection (CBP) plan was to house these incoming individuals at pop-up tents and CBP facilities, to increase our footprint in the Title 42 alleviation efforts, the Immigration Justice Project through IRLDP, decided to provide orientation and representation to these detained immigrants. However, attorneys are not being allowed into CBP facilities, despite credible fear interviews and subsequent immigration judge reviews being conducted telephonically in the tents and facilities, which are designed only for short term detention and not for legal proceedings. Pro-bono attorney listings, like our program, are not provided until after the CFIs are conducted. Policies of only one phone call per individual, leave immigrants with the choice of having to choose between calling their family/US sponsor or an attorney to represent them. The IRLDP is currently in consultation with its Advisory Panel to strategize around the best approach to provide some legal representation to detainees at the border.

The largest risk the program faces is capacity, attributed to the small number of qualified immigration attorneys in the region. The number of attorneys on the panel has doubled to 25 since inception, and OAC continues to advertise the program and its competitive attorney fee schedule. There is still room for growth within the detained population and efforts are always ongoing to advertise the program inside the detention facilities, to immigration stakeholders and to the general community. Further program advertisement will include a planned press conference in the fall, to continue to get the word out to the immigration community and potential clients of program eligibility and its mission.

Lessons Learned in Data Collection

The initial Board action on IRLDP requested OAC use a case management system to collect program data. The Public Defender's Office uses a case management system called Justice Case Activity Tracking System (JCATS). Initially, it was thought that JCATS could meet the request to use a case management system. However, the system was not built for immigration cases and would have required modification to track immigration case data. Ultimately, JCATS was used to collect intake data, but output and outcome data is collected in Microsoft Excel to allow for uniformity in the data collection. Attorneys log into the system and update their excel data each month without the need to "send" anything to the County. Share Point sends attorneys messages when comments are submitted to allow for continuous collaboration on the data.

The decisions on what data to collect was based on the initial Board of Supervisors direction, examples from other programs, and the demographic information collected for most county programs. The Board directed multiple data elements as outlined below.

- c) The program shall entail an annual report from the Public Defender's Office regarding:
 - i. Number of immigrants represented
 - ii. Number of days in custody before release, if released
 - iii. Dollar amount of the bond if given bond
 - iv. Substantive outcomes and substantive motions

- v. Status of pending cases:
 - 1. Returned to employment
 - 2. Returned to family
 - 3. Returned to community
 - 4. Remained in custody pending outcome
- vi. Number of interpreters needed to assist
- vii. Which language interpreters utilized
- viii. Relief from removal available and utilized
- ix. Require the Office of Assigned Counsel of the Public Defender's
- d) Office to use a case management system to capture other data that may be relevant or requested.
- e) The program shall build on lessons learned from the initial pilot project, as well as best practices from other counties with similar programs.

In addition to the elements above, the Board and executives asked for two additional elements, charges in immigration court and the number of family cases. Staff also included some elements from a Los Angeles County immigrant defense program monitored by Vera Institute and basic demographic information. Ultimately, we arrived at 50 data fields.

The data has not always been easy for attorneys to collect. For some fields, the definition was unclear or had to change due to County staff understanding of the immigration system. In other cases, the client does not understand what is being asked, does not want to share the information, or does not know the information. There is also a delay in getting the information at the beginning of a case when a client has not met or has only met briefly with an attorney.

Success Stories

We conclude our report with 15 success stories submitted by the IRLDP attorneys. These stories illustrate the possible successes attorneys can achieve even under difficult circumstances. The stories further provide context to the outputs and outcomes described earlier in the report.

Success Story 1

A client was referred to IRLDP in July 2022 after an unsuccessful “credible fear” interview and ordered removed to their home country. Asylum applicants are subject to a “credible fear interview” with an asylum officer. The officer determines whether “the applicant has a credible fear of persecution or torture” in their country of origin and if the applicant has a significant possibility of winning a case for asylum in front of an immigration judge, according to the Department of Homeland Security. The Client had been dealing with several health issues, such as Alzheimer’s and PTSD. The client had been detained since presenting themselves at the San Ysidro point of entry in 2020. Our program attorneys were able to walk the client out of the detention facility and back to their family. An appeal has been filed with the Board of Immigration Appeals and is pending, but the client is out of custody, employed and re-unified with their family, after almost three years of incarceration and moving through the immigration removal process without counsel.

Success Story 2

A client presented themselves at the San Ysidro Port of Entry and was detained due to prior criminal convictions in September 2022. The criminal convictions were from over a decade ago and the client has since rehabilitated, served his sentence, and gained lawful employment. The client was separated from his wife and children and unable to support his family for three months until IRLDP attorneys intervened. IRLDP was assigned in early December 2022. IRLDP was able to request an ICE bond hearing, the bond was granted, and the client was released from custody. Once the client was out of custody, a jurisdictional transfer was filed and granted, allowing the client to return to his city of residence, family, and employer. One of the primary goals of the IRLDP at inception was the re-unification of detained individuals with family and their communities.

Success Story 3

Mr. R has been a legal permanent resident since 1990. He worked and paid taxes every year in the United States until he lost his construction job in the beginning of the COVID-19 pandemic. Desperate for work, he answered a Facebook ad for a position as a driver. He met the person who made the ad, filled out a job application, and accepted a position to drive a car from Tijuana to San Diego Monday to Friday. One day, Customs and Border Protection (CBP) pulled the car into secondary inspection, and officers found drugs hidden inside the door panels and other compartments. Mr. R had no idea the car he was driving contained drugs, or that the job he took had anything to do with drugs. Scared at the discovery that his employer was a dangerous man, Mr. R initially lied to the CBP officers about his relation to the company he was driving for before ultimately confessing and sharing all the information he had about the people who hired him. Mr. R was not convicted of any drug crime, and only pleaded guilty to making a false statement. Still, Immigration and Customs Enforcement (ICE) initiated removal proceedings against him to try to take away his green card and deport him to Mexico. An IRLDP lawyer represented Mr. R in his removal proceedings, showing the Immigration Court the decades of his productive employment and tax history. Mr. R's attorney called on Mr. R's US family ties to testify to his good moral character and the meaningful role he's played in supporting them. The attorney also cited Mr. R's compelling health conditions, which were severe enough for him to be released from detention and placed on an ankle monitor. The Court granted Mr. R's cancellation of removal, allowing him to keep his green card and one day become a US citizen.

Success Story 4

Mr. A used to be a legal permanent resident living in California, but he lost his green card and got deported after developing a drug problem. Mr. A proceeded to spend 12 years in his home country Belize, where he was able to rebuild his life as a fisherman and father. However, Mr. A also suffered unrelenting harassment and torture by the police in Belize for being a criminal deportee. Unable to take it anymore, Mr. A left his family in Belize and reentered the United States, where he waved down Border Patrol and asked for asylum. An IRLDP attorney represented Mr. A in his withholding-only proceedings and argued for release on bond after he was detained for a prolonged time. The judge denied bond, but ICE decided to release Mr. A on its own discretion. Mr. A moved to Hawaii to live with his brother on the military base where his brother is serving in the US Army.

Success Story 5

A 42-year-old Mexican national stepfather to two young boys, and husband to his legal permanent resident wife was fighting to stay here and support his 16-year-old suicidal stepson. There were some

positive and negative factors in this case that required an attorney. The immigration judge stated he won "just by a hair." He is now with his family locally in San Diego with a strong sense of relief.

Success Story 6

Mr. M was detained at Otay Mesa after serving a federal sentence for the deliberate concealment of knowledge of a felony conviction in Arizona and detention in California. The client is a legal permanent resident and was charged as removable for alien smuggling. The attorney worked with Mr. M and his sister to get his parole request granted. The attorney was also able to get the case terminated by researching the charge of removability and realizing it was not applicable to him based on his conviction. The attorney put together a strong argument for termination filed with the court before his individual hearing. The Department of Homeland Security (DHS) read the motion to terminate and filed a motion to dismiss without prejudice. The judge signed an order dismissing the case, and the client gets to preserve his eligibility for legal permanent resident cancellation of removal.

Success Story 7

Ms. P, a victim of severe trafficking, had her removal proceedings terminated before the San Diego Immigration Court while her application for a T-Visa with United States Citizenship and Immigration Services (USCIS) is pending. She is making a safe life for her and her US citizen daughter in San Diego while they await more stability with the visa and without the removal proceedings pending against her.

Success Story 8

Ms. H was unlawfully arrested by ICE officers from her home. After preparing a motion to terminate based on the egregious violations by ICE, DHS agreed to dismiss proceedings against Ms. H. Ms. H was promptly reunited with family and is seeking relief before USCIS.

Success Story 9

Ms. R was released from detention because an IRLDP attorney was able to show that she is in fact a US citizen! She has been a citizen since 1982 and unfortunately has been removed twice.

Success Story 10

The client came to the US with his girlfriend, but she was released on parole, and he was detained due to an alleged criminal history. An IRLDP attorney took this case at the end of June, after the client was detained for about a month and a half. The attorney represented the client at his master calendar hearings. The attorney fixed multiple errors in the client's notice to appear. The attorney also submitted a Parole request with ICE, and the client was released.

Success Story 11

An IRLDP attorney represented a legal permanent resident client who entered the US as a refugee child from Iraq. His father was abusive, and his parents divorced, with his mother becoming addicted to drugs and later being institutionalized. His parents could not adequately care for him, so he and his three brothers ended up in foster care when he was about 10 years old. He suffered from depression and anxiety most of his life and ended up self-medicating and becoming addicted to drugs. He became homeless, his life spun out of control, and he ended up with multiple convictions which rendered him removable and ineligible for most relief. An application for convention against torture relief was filed for him, and it was granted by an immigration judge.

Success Story 12

A 57-year-old client from Jamaica sought asylum due to his LGBTQ status. As a young man he suffered assault-type convictions in Jamaica while defending himself against physical attacks from homophobic Jamaicans. Due to his age, he was not doing well in custody and was suffering physically and emotionally. At one point his blood pressure was uncontrolled. An IRLDP attorney applied for bond on his behalf, and it was granted despite his convictions because the attorney was able to prove that they related to his asylum claim and that he was rehabilitated. He has moved to New York where his case is ongoing.

Success Story 13

An LGBTQ client from Ghana did not pass his credible fear interview. These are sometime very difficult to overcome, and depending on who the judge, is s/he may not allow the attorney to address the court, so prepping the client to be cross-examined by the judge is critical. We were able to prepare the client to address the judge's concerns and overcome the negative credible finding. He has moved to Atlanta where his case is ongoing.

Success Story 14

An IRLDP attorney defended a Colombian client who had been threatened and beaten by the Colombian military for his involvement in anti-corruption political protests. He was beaten so badly that he had to be hospitalized and lost 80% vision in his left eye. He came here alone. After he departed Colombia, his father was threatened and beaten by military personnel who were looking for our client. The client was so sure that he would be killed upon return to Colombia that he informed his attorney he would commit suicide if he lost his case. The attorney was able to seek withholding of removal for him, and he was granted relief at his merits hearing.

Success Story 15

A judge granted withholding of removal to a client represented by an IRLDP attorney. She was subsequently released from detention.

Before the attorney began representing the client, she had been paroled and was awaiting her non-detained court hearings. However, she was arrested for giving a car ride to two undocumented people for money within the US. She was convicted for alien smuggling in Federal District Court and transferred to Otay Mesa for removal proceedings. This is where OAC and the IRLDP attorney picked up the case.

The client is a lesbian woman from Venezuela who was persecuted for participating in political rallies against the government. She was personally protesting the poor health care system that was denying her mother's treatment for breast cancer. When the military started cracking down violently on the protesters, she fell, broke her front tooth, and suffered other injuries. She fled into a grocery store to escape the military; however, the troops followed her in and arrested her for "theft." Making up false criminal charges is a common tool used by the Venezuelan government to justify jailing political opponents. The judge called her homosexual slurs and stated that he should send her to jail so that guards could make a real woman out of her. Instead, she was given community service that required guards to sign her proof of service document. The guards suggested she have sex with them to avoid the service. Later guards started demanding she pay them \$500 US dollars per month, and threatened to withhold signing her slip, which would violate her probation. Frustrated by this no-win situation she fled to Peru.

Once in Peru, she was denied legal status because she had an outstanding arrest warrant in Venezuela for failing to complete her community service. Her father, a retired high-ranking soldier, told her to seek asylum in the US because he was certain she could never return.

This is a case where the client had no money to begin with. She worked here as a cleaning lady but was unable to make ends meet so that is why she tried making side money giving a ride to undocumented people. Without this program, she would have been ordered removed.

References

Executive Office for Immigration Review. 2023. "EOIR Case Data." *FOIA Library*. July 3. Accessed July 21, 2023. <https://files.share.eoir.justice.gov/FOIA-TRAC-Report.zip>.

Transactional Records Access Clearinghouse. 2023. *Outcomes of Immigration Court Proceedings*. August 3. <https://trac.syr.edu/phptools/immigration/closure/>.

Appendix

Definitions

Detention Level

Detained – Client is currently detained, was detained at the time of reporting, or was detained when the case was closed.

Released from detention – Client is reported released from detention.

ATD only – Client was placed on Alternatives to Detention (ATD) without spending time in custody.

Rider case – Client was not detained but was served by the program because they were part of a consolidated case.

No associated detention or ATD – Client was never detained or placed on ATD but was served IRLDP attorneys.

Substantive Outcomes

Administrative Closure – Cases in which an Immigration Court judge decides not to deport the individual for other unspecified reasons or closes the case administratively or because of the failure of the government to prosecute the case.

Case Dismissed – Cases in which the government declines to pursue charges against an individual in removal proceedings.

Case Terminated – Cases in which an Immigration Court judge finds the charges against the individual are not sustained and “terminates” the case. Situations where the alien has established eligibility for naturalization can be grounds for termination.

Order of Removal – Cases in which an Immigration Court judge sustains the charges against the individual and issues a removal order. The term “removal” is used in a generic sense and includes orders of deportation, exclusion, etc. A removal order bars the individual from returning to the US for a period of years, or in some cases permanently.

Relief Granted – Cases in which an Immigration Court judge finds the original charges are sustained but finds provisions in the immigration law entitle the individual to “relief” from removal, allowing them to remain in this country. This is also used when an application is successful.

Voluntary Departure – Cases in which an Immigration Court judge sustains the charges against the individual and issues an order of voluntary departure. A so-called “voluntary departure” is when the individual is required to leave the country but is not legally barred from returning.

Withdrawal of Application for Admission – An option that US Department of Homeland Security might offer to an Arriving Alien whereby the alien chooses to withdraw his or her application to enter the United States, and immediately departs the United States (or pre-clearance port of entry). Unlike an order of removal (including expedited removal as well as orders obtained because of removal proceedings), a withdrawal of application for admission does not create a bar to future entry.

Closure Reasons

Attorney Withdrew (Change of Venue) – The case has been relocated outside of the San Diego region.

Attorney Withdrew (Other) – The attorney withdrew from the case for some other reason than a change of venue.

Closed - Client Request – The client requested to discontinue being represented by the attorney.

Closed - Ineligible for Representation – The client was deemed ineligible for the program.

Applications for Relief

Asylum/Withholding/Convention Against Torture – three forms of relief from removal or deportation for people who are afraid to return to their home countries.

Adjustment of Status - Adjustment of status is the process that people can use to apply for lawful permanent resident status (also known as applying for a Green Card) when they are present in the United States. This means that they may get a Green Card without having to return to your home country to complete visa processing.

Cancellation of Removal for Permanent Residents and Non-Permanent Residents – permanent residents and non-permanent residents may apply to an immigration judge to adjust their status from that of deportable alien to one lawfully admitted for permanent residence, provided certain conditions are met.

Cancellation of Removal Special Rule – cancellation of removal for non-lawful permanent resident (LPR) spouses or children of US citizens or LPRs who were subject to battery or extreme cruelty by a spouse or parent.

Special Immigrant Juvenile Status (SIJS) – If a person is in the United States and needs the protection of a juvenile court because they have been abused, abandoned, or neglected by a parent, they may be eligible for Special Immigrant Juvenile (SIJ) classification. If SIJ classification is granted, they may qualify for lawful permanent residency (also known as getting a Green Card).

Temporary Protected Status (TPS) – The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. USCIS may grant TPS to eligible nationals of certain countries (or parts of countries), who are already in the United States. Eligible individuals without nationality who last resided in the designated country may also be granted TPS.

U Visa – The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.

Withholding Only - When someone expresses a fear of persecution to an immigration officer who is considering reinstating a prior order of removal, the officer is required to first refer the individual to an asylum officer. Individuals who can demonstrate to the asylum officer that they have a “reasonable fear” of persecution in their home country are sent to immigration court for a special form of removal proceedings. These proceedings are known as “withholding-only” proceedings, because the only

protection that individuals may seek is withholding of removal or protection under the Convention Against Torture.