

Due Process for All

Evidence from Year 2 of the SAFE Network

Fact sheet
November 2019

Millions of immigrants in the United States are at risk of extended detention and permanent separation from their families, neighborhoods, and livelihoods resulting from deportation.¹ Despite the high stakes, there are many possible forms of legal defense available to people facing deportation. Yet many immigrants are unable to effectively present these claims because they have no right to government-funded representation in immigration court. This lack of due process has dire consequences: in only 3 percent of cases do unrepresented respondents who appear against a trained government attorney win the right to remain in the United States. In contrast, immigrants who are represented in court are up to 10 times more likely to establish a right to remain in the country.² As such, who wins and who loses in immigration court is determined not just by the merits of a case, but by whether or not an attorney is involved.

Empowered by this evidence and the results of a successful New York pilot, local communities and leaders are recognizing legal representation as a crucial last line of defense to keep their communities safe from undue separations. Legal representation ensures that even in the face of hostile federal

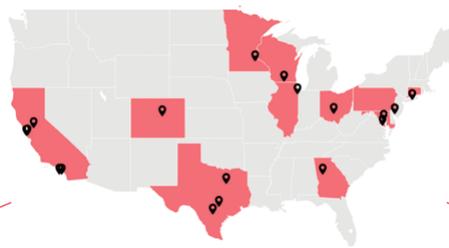
enforcement, the duty to ensure due process for all people in the United States is upheld.³

In 2017, building on this momentum and its many years running networks of legal access and representation programs for children and adults facing deportation, the Vera Institute of Justice (Vera) convened leaders from 12 diverse local jurisdictions that applied for the opportunity to work together to form the SAFE (Safety and Fairness for Everyone) Network. The SAFE Network employs a *universal representation system* of deportation defense—essentially a public defender model—to ensure equal access to due process for all.⁴ Universal representation ensures that everyone at risk of deportation—especially people in detention—has access to due process and a fair day in court if they cannot afford an attorney.⁵ As SAFE enters its third year, it has grown to a total of 18 jurisdictions in 11 states. The evidence summarized here shows how the visionary and urgent commitment these local jurisdictions have made is expanding due process protections and catalyzing national momentum for publicly funded deportation defense.⁶

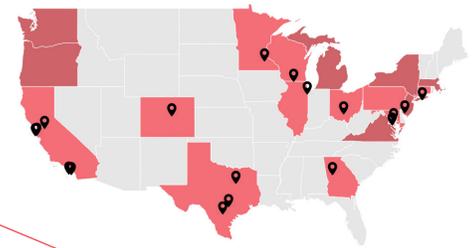
States with jurisdictions funding removal defense (pre-SAFE, pre-2017)



The SAFE Network (SAFE begins Nov. 2017)



Additional states with jurisdictions funding removal defense (2019)



SAFE Network jurisdictions, by year joined

Year 1

| | | |
|---------------|--------------------------------|----------------------------|
| Atlanta, GA | Columbus, OH | Prince George's County, MD |
| Austin, TX | Dane County, WI | Sacramento, CA |
| Baltimore, MD | Oakland and Alameda County, CA | San Antonio, TX |
| Chicago, IL | | Santa Ana, CA |

Year 2

Denver, CO
Long Beach, CA

Year 3

Dallas, TX
New Haven, CT*
Philadelphia, PA
Ramsey County and St. Paul, MN
San Francisco, CA*

*Affiliates of the SAFE Network

Leveling the playing field

The SAFE network's universal representation approach ensures that everyone has an equal chance of being represented by an attorney, regardless of their background.

- > In its first two years, the **SAFE network has represented 744 clients**, leveling the playing field for immigrants who otherwise would have gone to court alone.
- > Although most people in immigration court and detention—and the majority of SAFE clients—are from Mexico and the three Northern Triangle countries (El Salvador, Guatemala, and Honduras), SAFE's 744 clients hail from 53 countries and speak 30 languages. Universal representation helps ensure that language barriers do not present an impediment to a fair day in court and that people from diverse backgrounds are equally eligible for representation.

SAFE clients as community members

SAFE clients and their families are part of the fabric of their communities in the United States. Representation through SAFE therefore has radiating impacts that extend to these same families and communities.

- > **SAFE clients have been in the United States an average of 14 years**, and nearly a quarter of them have lived in the country for more than 20 years. For clients with lawful permanent residence (LPR), 96 percent have been in the United States past the five-year mark that triggers eligibility for citizenship for people who have this status.⁷
- > SAFE clients are **parents of 693 children under the age of 18** living in the United States, the vast majority of whom (82 percent) are U.S. citizens.
- > The 744 people represented through SAFE are **part of households that include at least 992 immediate nuclear family members** (299 spouses and 693 children under the age of 18) living in the United States.
- > SAFE clients have a total of 69 *derivative beneficiaries*—a term for family members, usually children and spouses, whose own immigration cases hinge on the outcome of the SAFE client's case. The legal outcomes of SAFE cases therefore have a magnifying effect,

impacting the legal status (where applicable) of clients' immediate family members.

- > Adults represented by SAFE **participate in the workforce at rates consistent with nationwide averages**: 61 percent of SAFE clients have been employed within the past 12 months as compared to 63 percent of people nationwide.⁸ Seventy-seven percent of clients with families are the “breadwinners,” responsible for at least half of their family's income.

SAFE represents many clients who are confronting vulnerabilities beyond their precarious immigration status.

- > Eighty-five percent of all SAFE cases began while the client was in detention.
- > **Many SAFE clients first came to the United States as children or young adults.** Sixty-nine percent of clients arrived before their 25th birthday and nearly 40 percent of all clients were 18 or younger when they arrived.
- > Attorneys ask clients about past victimization in assessing their eligibility for forms of protection in the United States. In this context, **27 percent of SAFE clients recounted being victims of crimes, domestic or intimate partner violence, or human trafficking during their lifetime.** For women and people who identify as gender-expansive, the statistics are even more stark: 42 percent of women and 100 percent of people who are nonbinary report having been victimized.

The road to freedom

Representation through SAFE helps people secure freedom and return to their families and communities while continuing to appear for their hearings in immigration court.

- > Over the first two years of the program, **43 percent of clients whose cases began in detention have been released from custody**, either on bond or at the conclusion of their legal cases.
- > **Although immigration proceedings are civil—not criminal—matters, people in immigration court face steep costs to obtain release from custody, even if granted bond.** Immigration court bonds are determined arbitrarily, without clear guidelines or regard for a client's income. For SAFE clients granted

bond, the average bond amount was \$6,788, although bonds were set as high as \$100,000. Nearly 20 percent of SAFE clients who were granted bond were required to pay \$10,000 or more to be released from detention. This means that, on average, **clients are expected to pay more than one-fifth of their annual household incomes in exchange for the right to fight their cases from outside of custody.**⁹ Twelve percent of those granted bond remain detained and unable to pay the bond amount.

- > Although bond amounts are extraordinarily high, many SAFE jurisdictions have bond funds to help raise money to cover these costs for clients who are unable to pay the bond themselves. This explains the high rates of release on bond despite the financial burden.
- > **Attorneys also help clients receive lower bonds.** Among SAFE clients who were granted bond, 74 percent were granted either a bond when one had not originally been set or a lower bond amount after the attorney's intervention.
- > **Attorneys support continued appearance in court.** Ninety-eight percent of SAFE clients released from custody have continued to appear for their scheduled court hearings, underscoring the senselessness of civil detention, particularly for those who have legal counsel.

The impact of due process on case outcomes

Zealous representation brings due process and fairness to clients facing a system that is often unbalanced and unjust. Representation ensures that clients have a chance to advance a defense and that an immigration judge can evaluate the merits of their cases. The end result of the legal case—whether the client wins the right to remain in the United States or is deported—is just one of many important factors in measuring the impact of programs like SAFE.

- > **To date, 40 percent of SAFE cases have completed in immigration court (300 of 744).** Though the

immigration court backlog has now surpassed one million cases, cases involving people who are detained move more quickly.¹⁰

- > **Thirty-five percent of the completed SAFE cases have achieved outcomes that allow the client to remain in the United States.** (Among those clients, 74 percent were granted legal relief while the others had their cases terminated or closed for other procedural reasons that are often the result of a lawyer's intervention.)¹¹ Although it is too soon to estimate the “win” rate for all SAFE clients, these preliminary outcomes already far surpass those of unrepresented people nationwide.¹²
- > Although the SAFE Network follows a universal representation model that accepts all cases without regard to the merits of the case, most SAFE clients (64 percent) have pursued some defense against deportation, known as legal relief, through motions or applications. **More than two-thirds of these clients (67 percent) are pursuing protection-based claims such as asylum.**

Conclusion

As the data shows, universal representation programs like SAFE are a critical last line of defense and are needed now more than ever before. Detention and deportation disrupt families and communities. Although representation cannot entirely repair the significant harms inflicted by these systems, it can play a key role in reducing these harms and delivering due process. In the face of a daunting and often dehumanizing legal system, the SAFE Network centers values of fairness and dignity while preserving the fundamental right to due process under the law.

Endnotes

- 1 See for example U.S. Immigration and Customs Enforcement (ICE), *Fiscal Year 2018 ICE Enforcement and Removal Operations Report* (Washington, DC: ICE, undated), <https://perma.cc/N463-SMSJ>.
- 2 For a summary of this research, see Karen Berberich and Nina Siulc, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court* (New York: Vera Institute of Justice, 2018), <https://perma.cc/6ZZ4-L2WS>.
- 3 To read more about the pilot, see Jennifer Stave, Peter Markowitz, Karen Berberich et al., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* (New York: Vera Institute of Justice, 2017), <https://perma.cc/C33A-4TAU>.
- 4 Karen Berberich, Annie Chen, Corey Lazar et al., *Advancing Universal Representation: A Toolkit: Module 1—The Case for Universal Representation* (New York: Vera Institute of Justice, 2018), <https://perma.cc/H4L5-UF55>.
- 5 To maximize limited resources, representation through SAFE is limited to low-income people with a household income not exceeding 200 percent of the federal poverty guidelines (in 2019, that would be an income of \$24,980 for an individual). For more information, see U.S. Department of Health & Human Services (HHS), *Annual Update on the HHS Poverty Guidelines* (Washington, DC: HHS, 2019), <https://perma.cc/CPM9-CQ99>.
- 6 The information included in this report contains data about clients represented through the SAFE Network from November 1, 2017 through August 31, 2019. It includes and builds on the cumulative information presented by Nina Siulc and Karen Berberich in *A Year of Being SAFE: Insights from the SAFE Network's First Year* (New York: Vera Institute of Justice, 2018), <https://perma.cc/D9H4-AF3J>.
- 7 Many SAFE jurisdictions require clients to have ties to the local area. This means that SAFE represents relatively few recent entrants to the United States, including new asylum seekers in urgent need of expanded access to counsel. As such, only 11 percent of SAFE clients to date had entered the United States within the previous year, whereas the majority of people in immigration detention nationwide are referred there by immigration authorities at ports of entry. For more information, see ICE, “Detention Management” (detention statistics tab), <https://www.ice.gov/detention-management>.
- 8 For national labor statistics, see U.S. Census Bureau, “Selected Characteristics of the Native and Foreign-Born Populations,” 2017 American Community Survey (ACS) 1-Year Estimates, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.
- 9 To be eligible for representation under SAFE, a client’s household income cannot exceed 200 percent of the federal poverty level. Assuming that each client makes the maximum amount permitted under these guidelines based on their family size, the average bond is 21 percent of a person’s total income.
- 10 Transactional Records Access Clearinghouse, “Immigration Court’s Active Backlog Surpasses One Million Active Cases,” September 18, 2019, <https://perma.cc/7JUS-6KBE>.
- 11 In immigration court, multiple types of dispositions may permit a client to remain lawfully in the country. Grants of relief are the strongest possible outcomes because they grant the client lawful immigration status. By contrast, although terminations and other closures do not result in deportation, those outcomes simply end the legal proceedings without necessarily offering the additional benefit of a change in legal status. Sometimes these other outcomes reflect the fact that a benefit has been granted in a separate proceeding, often before the U.S. Citizenship and Immigration Services, which is responsible for reviewing visa applications and other benefits.
- 12 See Stave, Markowitz, Berberich et al., *Evaluation of the New York Immigrant Family Unity Project*, 2017.

For more information

© 2019 Vera Institute of Justice.

For more information about this report and the SAFE Network, contact SAFE@vera.org or visit vera.org/

safe-network. The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire change in the systems people rely on for safety and justice and works in close partnership with government and civic leaders to

implement it. Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America’s increasingly diverse communities. For more information, visit www.vera.org.