

## BEYOND LEGAL DESERTS: ACCESS TO COUNSEL FOR IMMIGRANTS FACING REMOVAL<sup>\*</sup>

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*Removal proceedings are high-stakes adversarial proceedings in which immigration judges must decide whether to allow immigrants who allegedly have violated U.S. immigration laws to stay in the United States or to order them deported to their countries of origin. In these proceedings, the government trial attorneys prosecute noncitizens who often lack English fluency, economic resources, and familiarity with our legal system. Yet, most immigrants in removal proceedings do not have legal representation, as removal is considered to be a civil matter and courts have not recognized a right to government-appointed counsel for immigrants facing removal. Advocates, policymakers, and scholars have described this situation as an access-to-justice crisis or a representation crisis for immigrant communities. The prevailing wisdom suggests that the solution to this crisis is more lawyers or more nonlawyer practitioners, such as accredited representatives and legal technicians, who can provide affordable and quality legal services. The focus, therefore, has been on the ubiquity of “legal deserts,” commonly defined as areas that are in shortage of lawyers, and on ways to increase the supply of legal service providers in the marketplace.*

*This Article presents an empirical study of legal representation that unsettles this prevailing wisdom by showing why an adequate supply of legal service providers is a necessary, but not a sufficient, condition to address the representation crisis. Our study uses a new and original dataset that we compiled for the purposes of this study on immigration lawyers and non-detained immigrant respondents in removal proceedings. Our findings suggest that although the focus on the supply-side dimension of the representation crisis is important, it obscures other complex*

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sets of barriers to obtaining legal representation that are distinct from the problem of legal deserts. Specifically, our empirical analyses show that whether a non-detained immigrant respondent obtains legal representation is predicted by where they reside, their primary language, and the size of their conational social networks, controlling for the availability of practicing immigration lawyers in close proximity to their places of residence and other potential confounders. In short, we argue that geography, language, and networks are destiny for immigrant respondents when it comes to obtaining legal representation. Thus, addressing the representation crisis requires looking beyond the problem of legal deserts to attend to a variety of other hurdles to obtaining legal representation that are associated with certain geographical, linguistic, and social isolation in which many immigrants live.

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## INTRODUCTION

Removal proceedings in immigration courts have two defining characteristics. First, the stakes in removal proceedings are extraordinarily high for immigrant respondents. Justice Brandeis once wrote that deportation can result “in loss of both property and life; or of all that makes life worth living.”<sup>1</sup> More recently, Immigration Judge Dana Leigh Marks noted that immigration cases “often involve[] life and death consequences,” which “amount[s] to death penalty cases [being] heard in traffic court settings.”<sup>2</sup> Second, removal proceedings are marked by a deep power imbalance between the parties. Removal proceedings are highly adversarial, with government trial attorneys prosecuting noncitizens “who often lack English fluency, economic resources, and familiarity with our legal system.”<sup>3</sup> A growing body of research shows that legal representation is associated with favorable legal outcomes across many stages of the removal process.<sup>4</sup> Yet, most immigrants in removal proceedings do not have legal representation,<sup>5</sup> as removal is considered to be a civil matter and courts have not recognized a right to government-appointed counsel for immigrants facing removal.<sup>6</sup> For example, among cases that were initiated in fiscal year 2019 and resulted in a removal order, only about nineteen percent were represented, as of February 28, 2022.<sup>7</sup> Advocates, policymakers, and

1. Ng Fung Ho v. White, 259 U.S. 276, 284 (1922).

2. Dana Leigh Marks, *Immigration Judge: Death Penalty Cases in a Traffic Court Setting*, CNN (June 26, 2014, 9:29 AM), <https://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system> [<https://perma.cc/HB2E-PLLK>].

3. Emily Ryo, *Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings*, 52 LAW & SOC'Y REV. 503, 504–05 (2018) [hereinafter Ryo, *Representing Immigrants*].

4. *See id.* at 509–11.

5. *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 2 (2015) [hereinafter Eagly & Shafer, *Access to Counsel*].

6. KATE M. MANUEL, CONG. RSCH. SERV., R43613, ALIENS' RIGHT TO COUNSEL IN REMOVAL PROCEEDINGS: IN BRIEF 1 (2016), <https://fas.org/sgp/crs/homsec/R43613.pdf> [<https://perma.cc/WQK7-F8JE>] (explaining that immigrants in removal proceedings have a right to counsel at their own expense but not at the government's expense); 8 U.S.C. § 1229a(b)(4)(A) (“[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings.”).

7. *State and County Details on Deportation Proceedings in Immigration Court*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, <https://trac.syr.edu/phptools/immigration/nta/> [<https://perma.cc/9ZR9-7C2T> (staff-uploaded archive)] (last updated Feb. 2022) [hereinafter *State and County Details on Deportation Proceedings*] (sort data by Current Status, Fiscal Year, and Percent) (under column heading “Immigration Court State” select “All”; under column heading “Outcome” select “Removal Order”; under column heading “Represented” select “Represented”). Case-initiation date refers to “the date [of] the DHS-issued ‘Notice to Appear’ (NTA) – the charging document issued by DHS to persons who face removal.” *About the Data*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, [https://trac.syr.edu/phptools/immigration/nta/about\\_data.html](https://trac.syr.edu/phptools/immigration/nta/about_data.html) [<https://perma.cc/96HA-DDXV>].

scholars have described this situation as an access-to-justice crisis or a representation crisis for immigrant communities.<sup>8</sup>

The prevailing wisdom suggests that the solution to this representation crisis<sup>9</sup> is more lawyers or more nonlawyer practitioners, such as accredited representatives and legal technicians, who can provide low-cost and quality legal services.<sup>10</sup> The focus, therefore, has been on the ubiquity of “legal deserts,” commonly defined as areas with a shortage of lawyers,<sup>11</sup> and on ways to increase the supply of legal service providers in the marketplace.<sup>12</sup>

This Article presents an empirical study of legal representation that unsettles this prevailing wisdom by showing why an adequate supply of legal service providers is a necessary, but not a sufficient, condition to address the representation crisis in immigrant communities. Our study uses a new and original dataset that we compiled for the purposes of this study on immigration lawyers and non-detained immigrant respondents in removal proceedings. This dataset allows us to understand changes in the American immigration bar over

8. See, e.g., Peter L. Markowitz & Lindsay C. Nash, *Accessing Justice: The Availability and Adequacy of Counsel Removal Proceedings*, 33 CARDOZO L. REV. 357, 358 (2011); N. CAL. COLLABORATIVE FOR IMMIGRANT JUST., ACCESS TO JUSTICE FOR IMMIGRANT FAMILIES AND COMMUNITIES 6 (2014), <https://lccrsf.org/wp-content/uploads/2014/11/NCCIJ-Access-to-Justice-Report-2014.pdf> [<https://perma.cc/M9BK-X62U>]; Robert A. Katzmann, *When Legal Representation Is Deficient: The Challenge of Immigration Cases for the Courts*, 143 DAEDALUS 37, 37 (2014); LORI A. NESSEL & FARRIN ANELLO, SETON HALL L. CTR. FOR SOC. JUST., DEPORTATION WITHOUT REPRESENTATION 1 (2016), <https://www.immigrationresearch.org/system/files/SSRN-id2805525.pdf> [<https://perma.cc/22BJ-SB4X>].

9. We use the term “representation crisis” in this Article, wherever appropriate, in light of the growing body of scholarship that conceptualizes “access to justice” much more broadly than access to counsel. See, e.g., Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 914 (2009); Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS 49, 50 (2019); Kathryn M. Young, *What the Access to Justice Crisis Means for Legal Education*, 11 U.C. IRVINE L. REV. 811, 813–14 (2021); Beenish Riaz, *Envisioning Community Paralegals in the United States: Beginning To Fix the Broken Immigration System*, 45 N.Y.U. REV. L. & SOC. CHANGE 82, 87–89 (2021).

10. See, e.g., John Thompson, *A One-Year, Specialist’s Law Degree To Increase and Improve Representation Among Immigration Respondents*, 30 GEO. IMMIGR. L.J. 455, 467–68 (2016) (arguing for a one-year specialist degree in immigration law to incentivize more attorneys to enter immigration practice); Jean C. Han, *The Good Notario: Exploring Limited Licensure for Non-Attorney Immigration Practitioners*, 64 VILL. L. REV. 165, 190–91 (2019) (arguing for a program that would license *notarios* to allow them to practice immigration law on a limited basis).

11. Lauren Sudeall, *We Must Help Fix Justice Gap in Georgia’s Legal Deserts*, LAW360 (Oct. 31, 2021, 8:02 PM), <https://www.law360.com/articles/1432094/we-must-help-fix-justice-gap-in-georgia-s-legal-deserts> [<https://perma.cc/C9YY-HSUK>] (defining legal deserts as “places without significant numbers of lawyers and, in some cases, no lawyers at all”). For a discussion of the ubiquity of legal deserts in the United States, see, for example, Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-state Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 17–24 (2018) [hereinafter Pruitt et al., *Legal Deserts*]; and AM. BAR ASS’N, ABA PROFILE OF THE LEGAL PROFESSION 2 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [<https://perma.cc/2VFS-FHHQ>].

12. For arguments against federally funded counsel for all immigrants facing deportation, see generally Angélica Cházaro, *Due Process Deportations*, N.Y.U. L. REV. (forthcoming 2023).

time. The dataset also allows us to leverage, for the first time, residential ZIP codes associated with immigrant respondents' places of residence at the time of their removal proceedings.

Our findings suggest that although the focus on the supply-side dimension of the representation crisis is important, it obscures other complex sets of barriers to obtaining legal representation that are distinct from the problem of legal deserts. Specifically, our empirical analyses show that whether a non-detained immigrant respondent obtains legal representation is predicted by where they reside, their primary language, and the size of their conational social networks, controlling for the availability of practicing immigration lawyers in close proximity to their places of residence and other potential confounders. In short, we argue that geography, language, and networks are destiny for immigrant respondents when it comes to obtaining legal representation.<sup>13</sup>

To be clear, we recognize the critical importance of increasing the supply of immigration lawyers and nonlawyer practitioners to solve the representation crisis.<sup>14</sup> Our own analysis presented here provides empirical support for that widely held understanding.<sup>15</sup> However, our analysis also suggests that solving the representation crisis requires looking beyond the problem of legal deserts to attend to a variety of other hurdles to obtaining legal representation that are associated with certain geographical, linguistic, and social isolation in which many immigrants live. This approach to conceptualizing the representation crisis recognizes the deeply structural and social nature of this problem that is distinct from the issue of inadequate supply of legal service providers.

Unpacking the complexity of barriers that immigrants in removal proceedings face in obtaining legal representation, as we attempt to do in this Article, is an urgent task. As we document, the number of immigrants placed in removal proceedings has been increasing in recent years.<sup>16</sup> And the growing masses of immigrants navigating by themselves the veritable labyrinth that is our immigration system has been described as one of the defining civil rights

13. Our statement is inspired by the following phrase that Rebecca Sandefur and Aaron Smyth used in their pioneering study of access to justice: "Geography is destiny." REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA 9 (2011), [https://www.americanbarfoundation.org/uploads/cms/documents/access\\_across\\_america\\_first\\_report\\_of\\_the\\_civil\\_justice\\_infrastructure\\_mapping\\_project.pdf](https://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf) [<https://perma.cc/J9AZ-WESA>].

14. This is especially true given that federal regulations prohibit federally funded legal services organizations from representing many types of immigrants. See Geoffrey Heeren, *Illegal Aid: Legal Assistance to Immigrants in the United States*, 33 CARDOZO L. REV. 619, 653 (2011).

15. Although the connection between the supply of health service providers and healthcare utilization has been the focus of extensive empirical investigation in research on healthcare access, the same has not been true in research on access to counsel. See Mark S. Davis, *On the Horns of a Dilemma: Climate Adaption and Legal Profession*, 25 RICH. PUB. INT. L. REV. 197, 209 (2022) ("[T]he question is much less studied, and the metrics of the benefits of legal services are much softer and harder to prove.").

16. See *infra* Section I.A.

challenges of our time.<sup>17</sup> The challenge calls for innovative policy solutions. Yet, as Elinor Jordan has noted: “Only once we more precisely appreciate what is really stopping particular populations from getting legal help can we craft meaningful responses.”<sup>18</sup>

This Article proceeds in three major parts. Part I provides the background context necessary to appreciate the scope of the representation crisis in immigration courts. Our discussion focuses on the rise of new removal proceedings initiated between 2004 and 2019. We then use our originally collected dataset on immigration lawyers to describe the increasing population of immigration lawyers and their changing demographics during the same time period. Part II highlights key insights from research on immigrant integration and on access to counsel that guided our selection of key predictors of legal representation that we examine in this study. This part also describes the original data collection and analyses that we conducted to empirically investigate the importance of geography, language, and social networks in obtaining legal representation. Part III presents the results of our empirical analyses. It also discusses the contributions of this study to research on access to justice and the policy implications of our findings for conceptualizing and addressing the representation crisis. Our discussion draws on insights from a rich and longstanding body of empirical research on access to healthcare, given that the problem of access to healthcare presents notably similar challenges as the problem of access to counsel. We also emphasize the importance of centering the voices and experiences of immigrants in assessing any policy proposals that seek to identify and address the barriers they might face in obtaining legal representation.

Before proceeding, it is helpful to clarify two points. First, our discussion of removal proceedings and changes in the American immigration bar focuses on the period between 2004 and 2019, as our data on immigration lawyers is limited to this period. Our investigation of the predictors of legal representation focuses on 2019, which means our analyses are not confounded by dramatic system changes and disruptions that occurred with the start of the COVID-19 pandemic in 2020. For example, immigration courts across the country experienced varying levels of court shutdowns and indefinite hearing postponements during the pandemic. Many lawyers experienced numerous challenges in maintaining their contacts with, and providing services to, their

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17. Mary Juetten, *Access to Justice Startup Immigrants Like Us Helps Navigate the Immigration Process*, FORBES (May 14, 2020, 9:42 AM), <https://www.forbes.com/sites/maryjuetten/2020/05/14/access-to-justice-startup-immigrants-like-us-helps-navigate-the-immigration-process/?sh=10bfe64f3847> [<https://perma.cc/FFF2-4VVV> (staff-uploaded archive)] (quoting Jonathan Petts, cofounder of ImmigrationHelp.org).

18. Elinor R. Jordan, *What We Know and Need To Know About Immigrant Access to Justice*, 67 S.C. L. REV. 295, 318 (2016).

clients due to state- and city-wide lockdowns.<sup>19</sup> Video teleconference court hearings and remote legal services became more common.<sup>20</sup> In light of these and other unprecedented changes that the pandemic has wrought, investigations of the pandemic's effect on removal proceedings warrant their own independent study.<sup>21</sup>

Second, our analysis focuses only on immigrant respondents who were never detained or who had been detained but released from detention during their removal proceedings. Both practical and theoretical considerations warrant this particular focus. To our knowledge, the dataset on immigrant respondents in removal proceedings lacks information on detained immigrant respondents' places of residence before they were detained. Furthermore, detained immigrants face unique barriers to obtaining legal representation.<sup>22</sup> For example, they face numerous impediments to the use of telephones inside detention facilities.<sup>23</sup> The same is true of their attempts to maintain in-person contacts with individuals on the outside.<sup>24</sup> In addition, many detainees lose their jobs due to their confinement, which drastically undercuts their ability to retain private counsel.<sup>25</sup> Many detainees are also subject to multiple involuntary relocations throughout the duration of their confinement due to interfacility transfers.<sup>26</sup> These and related considerations underscore the need for a separate and dedicated investigation of legal representation among the detained population.<sup>27</sup>

19. See, e.g., Alison Frankel, *Immigration Lawyer: COVID-19 Has Made a Tough Job Nearly Impossible*, REUTERS (Mar. 25, 2020, 8:29 PM), <https://www.reuters.com/article/us-otc-covid19/immigration-lawyer-covid-19-has-made-a-tough-job-nearly-impossible-idUSKBN21D00T> [https://perma.cc/V3QN-AVSM]; Fatma E. Marouf, *The Impact of COVID-19 on Immigration Detention*, 2 FRONTIERS HUM. DYNAMICS 1, 6 (2021).

20. See, e.g., ABRAHAM BEDOY, PEGGY GLEASON & SHARON HING, IMMIGRANT LEGAL RES. CTR., REMOTE IMMIGRATION LEGAL SERVICES – HERE TO STAY? 2 (2021), [https://www.ilrc.org/sites/default/files/resources/7-21\\_remote\\_services\\_final.pdf](https://www.ilrc.org/sites/default/files/resources/7-21_remote_services_final.pdf) [https://perma.cc/BQL9-DEJM]; U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-104404, COVID-19: IMPROVEMENTS NEEDED IN GUIDANCE AND STAKEHOLDER ENGAGEMENT FOR IMMIGRATION COURTS 59 (2021), <https://www.gao.gov/assets/gao-21-104404.pdf> [https://perma.cc/A43D-NZH8].

21. See generally Ian Peacock & Emily Ryo, *A Study of Pandemic and Stigma Effects in Removal Proceedings*, 19 J. EMPIRICAL LEGAL STUD. 560 (2022) (examining the extent to which the COVID-19 pandemic changed the removal rates of different national origin groups in immigration courts).

22. Ryan D. Brunsink & Christina L. Powers, *The Limits of Pro Se Assistance in Immigration Proceedings: Discussion of NWIRP v. Sessions*, 122 DICK. L. REV. 847, 857–58 (2018) (explaining that immigrant detainees “often face challenges accessing things pro se individuals in other contexts might enjoy, such as the ability to make phone calls or gather evidence”).

23. Emily Ryo, *Fostering Legal Cynicism Through Immigration Detention*, 90 S. CAL. L. REV. 999, 1039–40 (2017).

24. *Id.* at 1039.

25. *Id.* at 1038–39.

26. See Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. CAL. L. REV. 1, 38–39 (2018).

27. For discussions on common obstacles that detained immigrants face in securing legal representation, see, for example, Margaret Taylor, *Promoting Legal Representation for Detained Aliens:*

## I. REMOVAL AND LEGAL REPRESENTATION

This part describes the nature of the representation crisis and the broader context that frames our empirical analyses. We begin by describing the increasing volume of removal proceedings and research on access to justice that has focused on the importance of lawyers in promoting equality and fairness in the removal process. We then present our original data and analysis on immigration lawyers that document the changes in the American immigration bar over the past decade. This analysis shows that despite the increasing number of immigration lawyers, access to representation remains a serious issue for immigrants in removal proceedings.

A. *Removal Proceedings and Legal Representation*

An immigrant can be placed in a removal proceeding after being apprehended at the border or in the interior of the United States.<sup>28</sup> Once a removal proceeding is initiated, an immigrant may apply for relief from removal, such as asylum, protection under the Convention Against Torture, cancellation of removal, or voluntary departure.<sup>29</sup> If relief is sought, the immigrant bears the burden of proof to establish that they satisfy the applicable eligibility requirements, and that the immigration judge (“IJ”) should grant relief.<sup>30</sup> Decisions rendered by IJs can be appealed to the Board of Immigration Appeals (“BIA”), and some BIA decisions may be appealed to the federal courts of appeals.<sup>31</sup> In brief, removal proceedings implicate a complex array of substantive laws and procedural regulations, including criminal law, for immigrant respondents who have a criminal history.<sup>32</sup> Furthermore, navigating the removal process requires the immigrant respondent to interact with multiple federal agencies and subagencies, including the Department of Homeland Security and the Department of Justice.<sup>33</sup>

The number of immigrants caught in these proceedings has been rising in the past few years. As shown below in Figure 1, the U.S. government initiated

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*Litigation and Administrative Reform*, 29 CONN. L. REV. 1647, 1667–75 (1997); Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, a Case Study*, 78 FORDHAM L. REV. 541, 546–51 (2009); and Cindy S. Woods, *Barriers to Due Process for Indigent Asylum Seekers in Immigration Detention*, 45 MITCHELL HAMLINE L. REV. 319, 341–45 (2019).

28. See Vy Thuan Nguyen, *A Practical Overview of U.S. Immigration Removal Proceedings, Administrative Agencies and Respondent’s Forms of Relief*, 42 N.C. CENT. L. REV. 217, 220 (2020).

29. *Id.* at 229–36.

30. *Id.* at 227–28.

31. *Id.* at 224–25.

32. Legal scholars refer to the body of law that merges immigration law and criminal law as “crimmigration.” See CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *CRIMMIGRATION LAW* *passim* (2d ed. 2021).

33. Nguyen, *supra* note 28, at 219.



670,857 new removal cases in U.S. immigration courts in fiscal year 2019.<sup>34</sup> This represents more than a three-fold increase in the number of new removal proceedings filed since 2004, which was 202,332.<sup>35</sup> Proceedings against immigrants from Mexico and the Northern Triangle Countries of Guatemala, Honduras, and El Salvador made up the bulk of the new proceedings initiated during this period.<sup>36</sup> In 2004, proceedings against immigrants from these four countries constituted sixty percent of all newly initiated proceedings,<sup>37</sup> which increased to about seventy-seven percent in 2019.<sup>38</sup>

34. *State and County Details on Deportation Proceedings*, *supra* note 7 [<https://perma.cc/DM8E-2VYF> (staff-uploaded archive)] (sort data by Initial Filing, Fiscal Year, and Number) (under column heading “Immigration Court State” select “All”; under column heading “Fiscal Year Case Began” select “2019”).

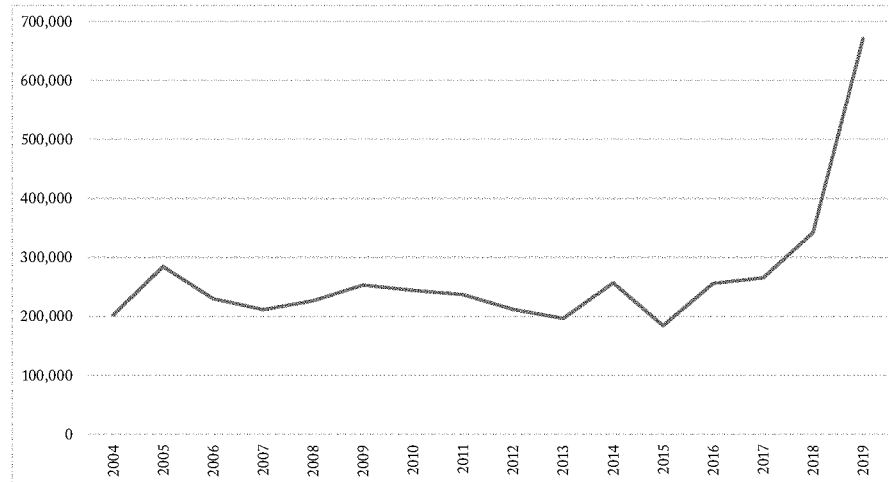
35. *Id.* [<https://perma.cc/9FES-GLAE> (staff-uploaded archive)] (sort data by Initial Filing, Fiscal Year, and Number) (under column heading “Immigration Court State” select “All”; under column heading “Fiscal Year Case Began” select “2004”).

36. *Id.* [<https://perma.cc/G4RH-LHCB> (staff-uploaded archive)] (sort data by Initial Filing, Fiscal Year, and Percent) (under column heading “Immigration Court State” select “All”; under column heading “Fiscal Year Case Began” select “All”; under column heading “Nationality” select relevant countries).

37. *Id.* (sort data by Initial Filing, Fiscal Year, and Percent) (under column heading “Immigration Court State” select “All”; under column heading “Fiscal Year Case Began” select “2004”; under column heading “Nationality” select relevant countries: Mexico (30.4%) [<https://perma.cc/WE5G-YDYB> (staff-uploaded archive)]; Honduras (11.7%) [<https://perma.cc/A4XX-X7KU> (staff-uploaded archive)]; El Salvador (9.87%) [<https://perma.cc/NU54-RH5Q> (staff-uploaded archive)]; Guatemala (7.78%) [<https://perma.cc/UG3C-2WSF> (staff-uploaded archive)]).

38. *Id.* (sort data by Initial Filing, Fiscal Year, and Percent) (under column heading “Immigration Court State” select “All”; under column heading “Fiscal Year Case Began” select “2019”; under column heading “Nationality” select relevant countries: Mexico (11.9%) [<https://perma.cc/U8B8-J8ED> (staff-uploaded archive)]; Honduras (26.8%) [<https://perma.cc/T69Q-MGHV> (staff-uploaded archive)]; El Salvador (9.82%) [<https://perma.cc/3KKT-U3KG> (staff-uploaded archive)]; Guatemala (28.1%) [<https://perma.cc/ET4R-8LCM> (staff-uploaded archive)]).

Figure 1. Number of New Removal Cases by Fiscal Year (FY) the Cases Were Initiated, FY2004–2019<sup>39</sup>



Notes: A fiscal year begins on October 1st and ends on September 30th.

As of October 31, 2022, new proceedings initiated, together with current pending cases, total an astonishing backlog of over 1.9 million cases in immigration courts.<sup>40</sup> The way these cases are adjudicated by immigration judges and the barriers that many immigrant respondents face in obtaining fair and consistent results in immigration courts have drawn a great deal of public scrutiny and criticism.<sup>41</sup> In particular, the dismally low rates of legal representation in removal proceedings have been a persistent point of concern for advocates, policymakers, and scholars alike.<sup>42</sup> This is because legal

39. Figure 1 source: *State and County Details on Deportation Proceedings*, *supra* note 7 (sort data by Initial Filing, Fiscal Year, and Number) (under column heading “Immigration Court State” select “All”; under column heading “Fiscal Year Case Began” select “2019”). Case-initiation date refers to “the date [of] the DHS-issued ‘Notice to Appear’ (NTA) – the charging document issued by DHS to persons who face removal.” *About the Data*, *supra* note 7.

40. *Immigration Court Backlog Tool*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/) [<https://perma.cc/HD3M-YQE6> (staff-uploaded archive)] (last updated Dec. 2022) (under column heading “State” select “Entire US”). According to the EOIR, about 1.7 million cases were pending at the end of the third quarter of fiscal year 2022 (end of June 2022). EXEC. OFF. OF IMMIGR. REV., ADJUDICATION STATISTICS: PENDING CASES, NEW CASES, AND TOTAL COMPLETIONS (2022), <https://www.justice.gov/eoir/page/file/1242166/download> [<https://perma.cc/7BDV-DAU4>].

41. See, e.g., Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 378–80 (2007); Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 LAW & SOC’Y REV. 117, 123–24 (2016); AM. BAR ASS’N, REFORMING THE IMMIGRATION SYSTEM, 2-7 to 2-29 (2019), [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/2019\\_reforming\\_the\\_immigration\\_system\\_volume\\_2.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf) [<https://perma.cc/QT2L-G3B4>].

42. See *supra* notes 7–8 and accompanying text.

representation “[n]ot only . . . level[s] out the playing field between an individual and the state, but it creates a more efficient system, which ultimately leads to additional benefits such as lower detention costs.”<sup>43</sup> For example, studies have found positive relationships between legal representation and favorable legal outcomes along various stages of the removal process, including greater engagement with the legal process on the part of immigrant respondents, higher chances of release from detention, reduced odds of legal errors, increased chances of appearing in court, and higher chances of obtaining relief from removal.<sup>44</sup>

The growing public and scholarly concern over the low rates of representation for immigrants in removal proceedings is consistent with the way that the issue of access-to-counsel has come to dominate the access-to-justice movement more generally in the United States.<sup>45</sup> For example, David Luban stated that “[w]hen scholars and activists in the public-interest community talk about ‘access to justice,’ they usually have in mind access to lawyers.”<sup>46</sup> Likewise, Nourit Zimmerman and Tom Tyler have observed: “Having access to representation by an attorney is considered a central means to increase individuals’ access to justice, i.e., access to legal institutions or to legal solutions to their problems.”<sup>47</sup>

Similarly, in terms of reform efforts and proposals to address the problem of low representation rates for immigrants, the dominant approach has been to seek to increase the supply of qualified legal service providers.<sup>48</sup> For example,

43. Alex Boon, Ben España, Lindsay Jonasson, Teresa Smith, Juliet P. Stumpf & Stephen W. Manning, *Divorcing Deportation: The Oregon Trail to Immigrant Inclusion*, 22 LEWIS & CLARK L. REV. 623, 639 (2018).

44. See, e.g., Eagly & Shafer, *Access to Counsel*, *supra* note 5, at 25; David Hausman, *The Failure of Immigration Appeals*, 164 U. PA. L. REV. 1177, 1212–13 (2016); Stephen Manning & Kari Hong, *Getting It Righted: Access to Counsel in Rapid Removals*, 101 MARQ. L. REV. 673, 703 (2018); Ryo, *Representing Immigrants*, *supra* note 3, at 509–11; Ingrid Eagly & Steven Shafer, *Measuring In Absentia Removal in Immigration Court*, 168 U. PA. L. REV. 817, 826 (2020).

45. See, e.g., Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 914 (2009) (“[A]ccess to justice has come to be framed rather narrowly into four components: (1) access of (2) an individual (3) to a lawyer, or some form of assistance purported to be at least a partial substitute, (4) to help deal with a problem or dispute already framed in legal terms.”); Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People’s Courts*, 22 GEO. J. ON POVERTY L. & POL’Y 473, 504 (2015) (“Most controversies about current approaches to access to justice revolve around the issue of attorneys.”); Lauren Moxley, *Zooming Past the Monopoly: A Consumer Rights Approach to Reforming the Lawyer’s Monopoly and Improving Access to Justice*, 9 HARV. L. & POL’Y REV. 553, 566 (2015) (“In response to the access to justice crisis for low- and middle-income groups, the organized bar has focused ‘almost exclusively’ on two worthy endeavors: (1) improving legal aid services and (2) increasing commitment to pro bono.”).

46. David Luban, *Optimism, Skepticism, and Access to Justice*, 3 TEX. A&M L. REV. 495, 499 (2016).

47. Nourit Zimmerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 FORDHAM URB. L.J. 473, 474 (2010).

48. See, e.g., Lori Adams & Alida Y. Lasker, *The Asylum Representation Project and the Leon Levy Fellowship at Human Rights First: An Innovative Partnership To Increase Pro Bono Representation for Indigent*

John Thompson has advocated for establishing a one-year law degree program that would train and license lawyers to practice only in immigration law.<sup>49</sup> In addition, Fatma Marouf and Luz Herrera have proposed establishing a pro bono program through the Executive Office of Immigration Review (“EOIR”)<sup>50</sup> to promote greater involvement of pro bono legal representation of immigrants in removal proceedings.<sup>51</sup> Yet others have called for expanded partnerships between nonprofit legal service providers and Big Law firms to grow the pool of lawyers in Big Law firms who can provide pro bono legal representation to immigrants.<sup>52</sup>

In addition, there is a growing interest in, and debates about, promoting the growth of nonlawyer practitioners to meet the legal needs of immigrants.<sup>53</sup> For example, Michele Pistone, a law professor and an immigration lawyer, has created an online certificate program to train immigrant advocates, aiming to expand the existing federal program called the Recognition and Accreditation Program.<sup>54</sup> The Recognition and Accreditation Program is an initiative through which the federal government authorizes nonlawyer representation of noncitizens in immigration matters.<sup>55</sup> These nonlawyers, called “accredited representatives” (“ARs”), are required to work with a nonprofit “recognized organization.”<sup>56</sup> Currently, the total number of ARs is exceedingly small.<sup>57</sup> Another pipeline program, also relatively limited in its overall capacity, is the

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*Asylum-Seekers*, 33 CARDOZO L. REV. 417, 419 (2011) (describing a project aimed at increasing pro bono legal representation of immigrants); Robert A. Katzmann, *Study Group on Immigrant Representation: The First Decade*, 87 FORDHAM L. REV. 485, 491–92 (2018) [hereinafter Katzmann, *Study Group on Immigrant Representation*] (describing the creation of the Immigrant Justice Corps that provides a two-year fellowship for recent law and college graduates to work in a nonprofit organization).

49. John Thompson, *A One-Year, Specialist’s Law Degree To Increase and Improve Representation Among Immigration Respondents*, 30 GEO. IMMIGR. L.J. 455, 456 (2016).

50. The EOIR is the component agency within the U.S. Department of Justice that oversees the immigration courts and the BIA. *Executive Office for Immigration Review: About the Office*, U.S. DEP’T JUST., <https://www.justice.gov/eoir/about-office> [https://perma.cc/42QN-3N5F] (last updated May 18, 2022).

51. Fatma Marouf & Luz E. Herrera, *Technological Triage of Immigration Cases*, 72 FLA. L. REV. 515, 522 (2020).

52. Adams & Lasker, *supra* note 48, at 430.

53. For a discussion of arguments on both sides, see generally M. Isabel Medina, *The Challenges of Facilitating Effective Legal Defense in Deportation Proceedings: Allowing Nonlawyer Practice of Law Through Accredited Representatives in Removals*, 53 S. TEX. L. REV. 459 (2012).

54. See Michele R. Pistone, *Expanding Immigrant Justice by Training Professionals*, 61 JUDGES’ J. 15, 17 (2022); *Executive Office for Immigration Review: Recognition & Accreditation Program*, U.S. DEP’T JUST., <https://www.justice.gov/eoir/recognition-and-accreditation-program> [https://perma.cc/P2T7-X3KF] (last updated Apr. 14, 2022) [hereinafter *Recognition & Accreditation Program*].

55. *Recognition & Accreditation Program*, *supra* note 54; 8 C.F.R. § 1292.1(a)(4).

56. *Recognition & Accreditation Program*, *supra* note 54.

57. Pistone, *supra* note 54, at 16 (“[T]here are fewer than 2,000 ARs nationwide. Of the 1,991 ARs authorized to provide legal services, most (about 1,700) are partially accredited; fewer than 300 are fully accredited to provide legal representation in immigration courts.”).

Immigrant Justice Corps (“IJC”), which offers not only recent law school graduates, but also college graduates, a two-year fellowship at a nonprofit that provides legal services to immigrants.<sup>58</sup> According to Judge Robert Katzmann: “IJC’s solution to the representation crisis is to populate the immigration bar with well-trained and high-caliber attorneys, creating a generation of leaders with a lifelong commitment to immigrant justice.”<sup>59</sup>

Finally, there has been an increased local and philanthropic interest in funding programs that expand the supply of lawyers who can provide deportation defense to certain groups of vulnerable immigrants.<sup>60</sup> For example, the universal representation program for detained immigrants in New York City, established in 2013, has inspired over fifty similar publicly funded deportation defense programs throughout the country.<sup>61</sup> There also have been growing calls for federally funded government-appointed counsel for all indigent immigrants.<sup>62</sup> A recent policy report by the American Immigration Lawyers Association (“AILA”) argues: “The long-term goal should be for the federal government to create and fund legal representation programs nationwide to ensure the broadest eligibility and coverage to those who, after being adequately screened, are determined to be unable to afford counsel.”<sup>63</sup>

Nonetheless, there is widespread recognition among scholars and advocates that a right to government-appointed counsel in removal proceedings

58. See Han, *supra* note 10, at 178–79; Katzmann, *Study Group on Immigrant Representation*, *supra* note 48, at 491–92.

59. Katzmann, *Study Group on Immigrant Representation*, *supra* note 48, at 491–92; see also Ann Farmer, *Wanted: Skilled Immigration Lawyers*, 23 PERSPS. 8, 8 (2015) (quoting IJC’s executive director, who said, “But our long-time goal is really to upgrade the prestige of the field so that students who go to law school say, ‘I want to be an immigration lawyer’”).

60. See Michael Kagan, *Toward Universal Deportation Defense: An Optimistic View*, 2018 WIS. L. REV. 305, 306; Lindsay Nash, *Universal Representation: Systemic Benefits and the Path Ahead*, 7 J. MIGRATION & HUM. SEC. 103, 104 (2019).

61. *Advancing Universal Representation Initiative*, VERA INST. JUST., <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative> [<https://perma.cc/HA5Z-33VS>].

62. KAREN BERBERICH, ANNIE CHEN, COREY LAZAR & EMILY TUCKER, CTR. FOR POPULAR DEMOCRACY, NAT’L IMMIGR. L. CTR. & VERA INST. OF JUST., *ADVANCING UNIVERSAL REPRESENTATION* 5 (2018), <https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1> [<https://perma.cc/K85M-8PBW>]. Currently, there are two federally funded legal counsel programs for two special groups of immigrants: unaccompanied immigrant children and individuals deemed to be mentally incompetent. For details, see GREG CHEN & JORGE LOWEREE, AM. IMMIGR. COUNCIL, *POLICY BRIEF: THE BIDEN ADMINISTRATION AND CONGRESS MUST GUARANTEE LEGAL REPRESENTATION FOR PEOPLE FACING REMOVAL* 2 (2021), [https://www.americanimmigrationcouncil.org/sites/default/files/research/the\\_biden\\_administration\\_and\\_congress\\_must\\_guarantee\\_legal\\_representation\\_for\\_people\\_facing\\_removal.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_biden_administration_and_congress_must_guarantee_legal_representation_for_people_facing_removal.pdf) [<https://perma.cc/JF4N-FQ64>].

63. AM. IMMIGR. LAWS. ASS’N, *AILA RECOMMENDATIONS ON THE EXPANSION AND IMPLEMENTATION OF IMMIGRATION LEGAL REPRESENTATION PROGRAMS* 2 (2022), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-recommendations> [<https://perma.cc/ZZ7B-BT7P> (staff-uploaded archive)].

is unlikely to be established in the foreseeable future.<sup>64</sup> Given this context, an important starting point for our analysis is to understand how the *existing* immigration bar has changed over time to respond to the changing volume and nature of removal cases in immigration courts.

### B. *Immigration Bar*

Data challenges have been a significant barrier to conducting systematic studies of the immigration bar. The EOIR maintains a record of individual attorneys who appear before immigration courts,<sup>65</sup> but it no longer releases that information. Collecting information from individual state bars on practicing immigration lawyers has proven to be infeasible for several reasons. First, not all state bars maintain a list of self-identified immigration lawyers, and not all state bars have a section on immigration law that its lawyers can join voluntarily. For example, the State Bar of Indiana allows searches only by attorney name or attorney number—not by practice area.<sup>66</sup> Second, even if a state bar maintains a list of self-identified immigration law practitioners, or has a section on immigration law, the data is only cross-sectional (rather than historical and longitudinal) because the data pertains only to lawyers who are currently licensed to practice. Third, the type of personal information on lawyers that can be obtained from state bars is extremely limited.<sup>67</sup> Of note, we encountered similar problems with online lawyer directories such as Martindale-Hubbell and Justia.

Thus, we collected original large-scale panel data on immigration lawyers from AILA. Founded in 1946, AILA is a national association of lawyers and law professors who practice and teach immigration law.<sup>68</sup> AILA is a nonprofit

64. See, e.g., Adams & Lasker, *supra* note 48, at 421 (“[N]umerous scholars and advocates have argued in favor of a right to appointed counsel in immigration proceedings . . . Unfortunately, however, Congress has not heeded this call and seems unlikely to do so in the foreseeable future.”); Erin B. Corcoran, *Bypassing Civil Gideon: A Legislative Proposal To Address the Rising Costs and Unmet Legal Needs of Unrepresented Immigrants*, 115 W. VA. L. REV. 643, 653 (2012) (“[A]dvocates have continued to argue for a right to counsel in immigration removal cases . . . without much success in changing the courts’ or Congress’s mind.”); Carla L. Reyes, *Access to Counsel in Removal Proceedings: A Case Study for Exploring the Legal and Societal Imperative To Expand the Civil Right to Counsel*, 17 U.D.C. L. REV. 131, 154 (2014) (noting that a federally funded right to appointed counsel program is a “political nonstarter”); Jordan, *supra* note 18, at 303 (“[M]any scholars agree that appointed representation for all immigrants is not likely to be provided in the near term.”).

65. See Eagly & Shafer, *Access to Counsel*, *supra* note 5, at 25 (“EOIR maintains a record of attorney-level characteristics for each attorney who appears in the nation’s immigration courts.”).

66. *Indiana Roll of Attorneys*, IND. JUD. BRANCH, <https://courtapps.in.gov/rollofattorneys> [<https://perma.cc/2GZG-87UD>].

67. For example, the State Bar of Indiana provides only the following information on each attorney: license status, disciplinary history, contact information the attorney has chosen to display, and any other name(s) the attorney has used to practice law. *Id.*

68. *About*, AM. IMMIGR. LAWS. ASS’N, <https://www.aila.org/about> [<https://perma.cc/WKM6-ZJ8V>].

organization with thirty-nine chapters and over fifty national committees throughout the United States.<sup>69</sup> Membership is voluntary and AILA charges an annual fee for lawyers to join,<sup>70</sup> which means that not every immigration lawyer is a member of AILA. Thus, we do not claim that the data is comprehensive nor nationally representative.

However, at least three facts about AILA are important to consider for the purposes of this study. First, to our knowledge, AILA is the only national legal association in the United States for immigration attorneys. Second, AILA offers a variety of essential services and resources for immigration lawyers (including continuing legal education, professional services, and the latest legal updates and resource materials that enable practitioners to stay current in immigration law).<sup>71</sup> Finally, AILA's reach is broad and diverse, as evidenced by its membership base that includes lawyers from across mainland United States and U.S. territories.<sup>72</sup> Taken together, these facts suggest to some observers that “[w]hile there are certainly some lawyers handling immigration matters who are not members of AILA, most competent attorneys seeking to represent immigrants would almost certainly be AILA members (with the exception of attorneys at big firms who take on the occasional pro bono case under supervision).”<sup>73</sup>

We sought and obtained special access to anonymized AILA membership data solely for research purposes. We worked closely with AILA's data analyst to extract comprehensive longitudinal data that we present in this Article. The earliest year that AILA membership data is available in a format that allows yearly comparisons is 2004. The latest year included in the AILA data is 2019. AILA data contains detailed information on each lawyer—data that is not available through any other source of which we are aware. For example, AILA data contains a variety of background and practice-related information on each lawyer, including their gender, ethnicity, bar admission date, work address, law school attended and graduation year, specific areas of practice within immigration law, practice setting, and so on. Equally important, AILA data is

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69. *Id.*

70. *Membership: Why and How To Join AILA*, AM. IMMIGR. LAWS. ASS'N, <https://www.aila.org/membership/join> [<https://perma.cc/CNM8-SKFH>].

71. *About*, *supra* note 68.

72. *See Find an Immigration Lawyer*, AM. IMMIGR. LAWS. ASS'N, <https://www.ailalawyer.com/> [<https://perma.cc/DB3C-VYS6>].

73. Careen Shannon, *To License or Not To License? A Look at Differing Approaches to Policing the Activities of Nonlawyer Immigration Service Providers*, 33 CARDOZO L. REV. 437, 444 (2011). It is, however, important to note that given the voluntary and fee-based nature of AILA's membership, the following types of lawyers may be underrepresented in the AILA membership data: (1) lawyers who cannot or do not want to pay the membership fee, (2) experienced lawyers who might view the benefits of AILA membership as relatively marginal given their already high levels of expertise and embeddedness in networks of immigration lawyers, and (3) lawyers who practice immigration law only on a part-time basis.

longitudinal in nature, which allows us to analyze changes over time (at the aggregate level, as well as at the level of individual lawyers using their unique identification numbers).

Each of the figures shown below in this section pertaining to the immigration bar are based on our analysis of the original AILA dataset. All figures and corresponding discussions included in this section relate to calendar years (“CY”). We weighted the members by the number of days they were active in a given calendar year. The Methods Appendix accompanying this Article explains why and how we calculated the weighted membership statistics. For purposes of our analysis, we excluded AILA members whose membership type was listed as “Student” or “Complimentary.”<sup>74</sup> The membership types that are included in our analysis are “Regular,” “Non-profit,” “Retired,”<sup>75</sup> “Senior,” and “Other.”

We begin by examining the growth in the immigration bar, as measured by regular membership in AILA. As shown in Figure 2, regular AILA membership began to steadily grow starting in 2010. The number of active AILA members rose from 8,126 in 2004 to 14,879 in 2019, representing more than an 83% increase.

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74. We excluded student members because they are not members of the bar and cannot practice law. We excluded complimentary members because our understanding is that these are AILA staff who are members simply by virtue of their employment at AILA.

75. We included retired members in our sample because retired attorneys sometimes continue to practice during retirement, often in a pro bono capacity.



Figure 2. Total AILA Immigration Lawyers, CY2004–2019

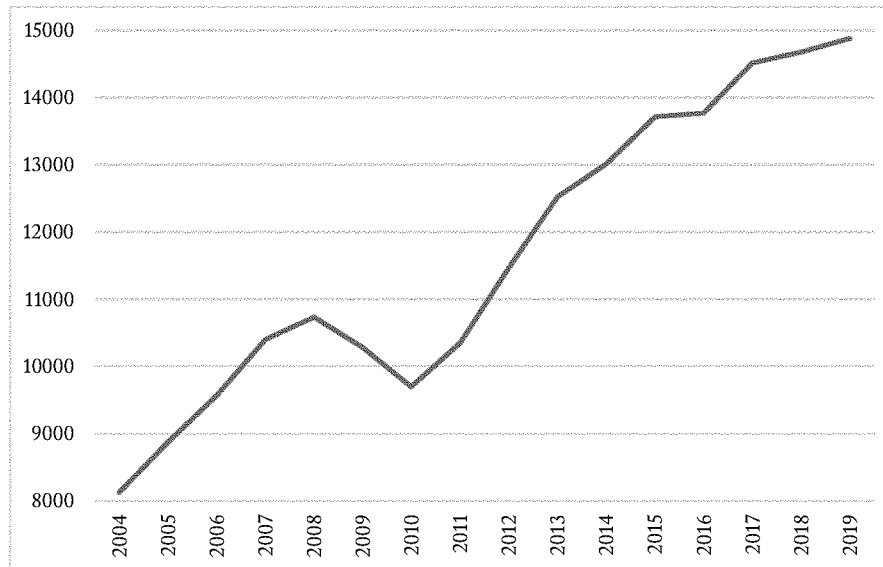
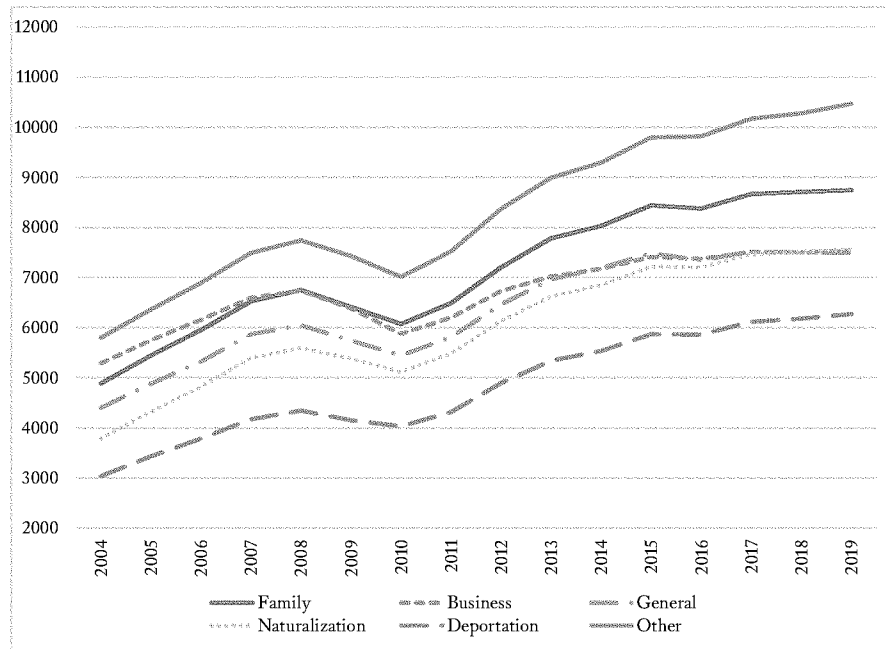


Figure 3 shows the total number of AILA immigration lawyers by area of expertise.<sup>76</sup> Figure 3 shows that the increase in the number of AILA immigration lawyers shown in Figure 2 during the study period was not concentrated in any single practice area within immigration law. Instead, the total number of AILA lawyers was on the rise across all practice areas, including deportation defense. However, as a percentage of the total, only two areas of expertise experienced an increase between 2004 and 2019: naturalization (14% to 16%) and deportation defense (11% to 13%).<sup>77</sup>

76. Attorneys may select more than one area of expertise.

77. The denominator used in calculating the percentages is the total number of attorneys who indicated that a given area of expertise was one of their areas of expertise.

Figure 3. Areas of Expertise, CY2004–2019

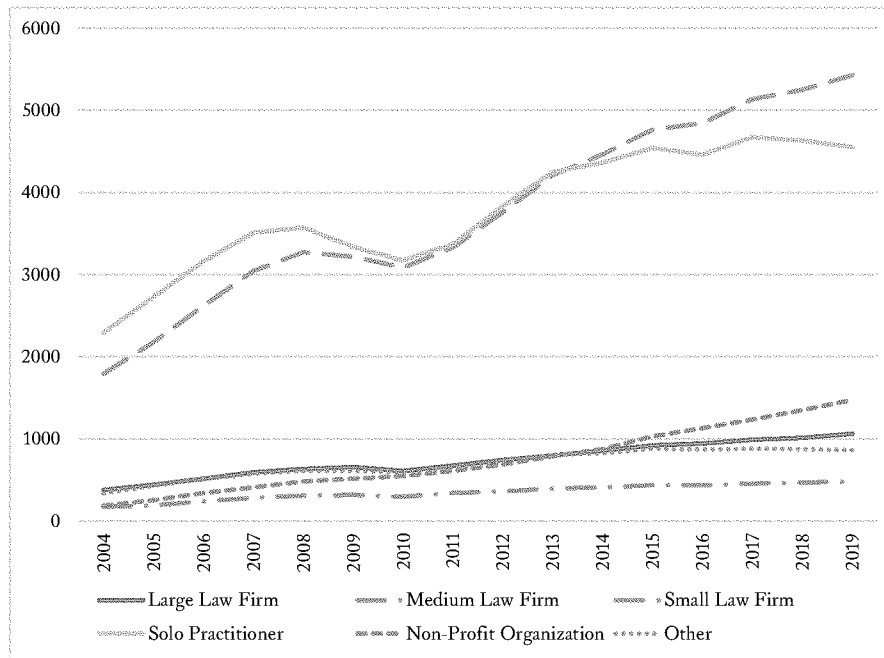


*Notes:* The “Other” category includes Consular Practice, Asylum, Waivers, Litigation, Investor, Employer Sanctions, Medical, and Global Migration. Since members may select multiple Areas of Expertise, the sum of the weighted members who chose each Area of Expertise may exceed the total number of weighted members.

Figure 4 shows that in terms of the total number of attorneys in each type of practice setting,<sup>78</sup> solo practice and small law firm practice dominated the field through the study period. However, only two practice settings experienced an appreciable growth in percentage terms between 2004 and 2019: small law firms (35% to 39%) and nonprofit organizations (4% to 11%).

78. “Small law firms” are defined as having 2–24 total attorneys. “Medium law firms” are defined as having 25–74 total attorneys. “Large law firms” are defined as having 75 or more total attorneys.

Figure 4. Type of Practice Settings, CY2004–2019



Notes: The “Other” category includes In-House Corporate, Academic, and Other.

It is also worth noting that AILA immigration lawyers became demographically more diverse during the study period, as illustrated in Figures 5 and 6, respectively. Figure 5 shows a greater increase in the number of female lawyers compared to male lawyers. More specifically, 44% of the lawyers in 2004 were women, compared to 57% in 2019. There was also an increase in racial and ethnic diversity among lawyers, as illustrated in Figure 6. Whereas the percentage of White lawyers decreased from 68% in 2004 to 59% in 2019, the percentage of non-White lawyers increased from 32% to 41% during the same period. This relative increase in the non-White population is largely attributable to the increase in the percentage of lawyers identifying themselves as Hispanic (10% in 2004 to 18% in 2019) or “Other” (4% in 2004 to 6% in 2019).

Figure 5. Self-Reported Gender, CY2004–2019

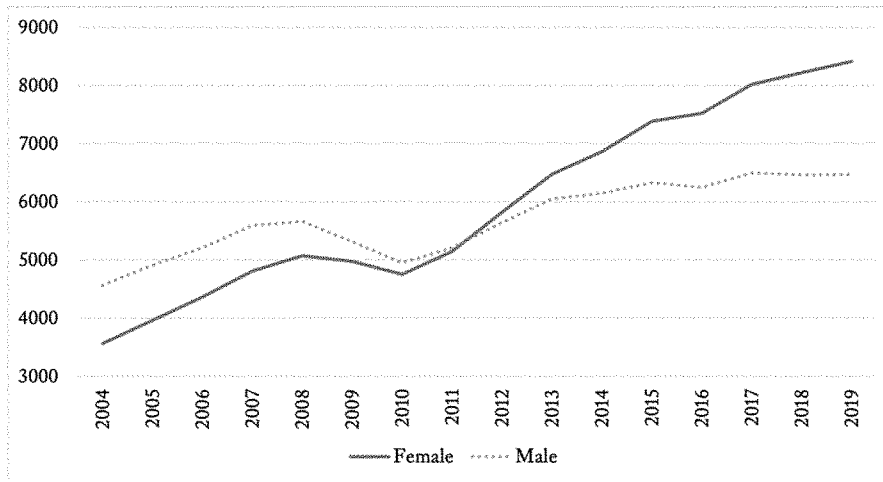
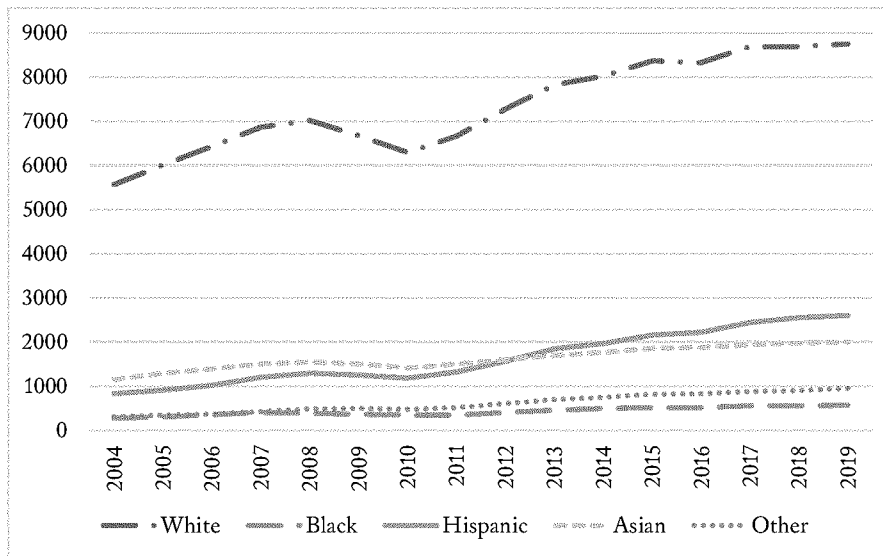


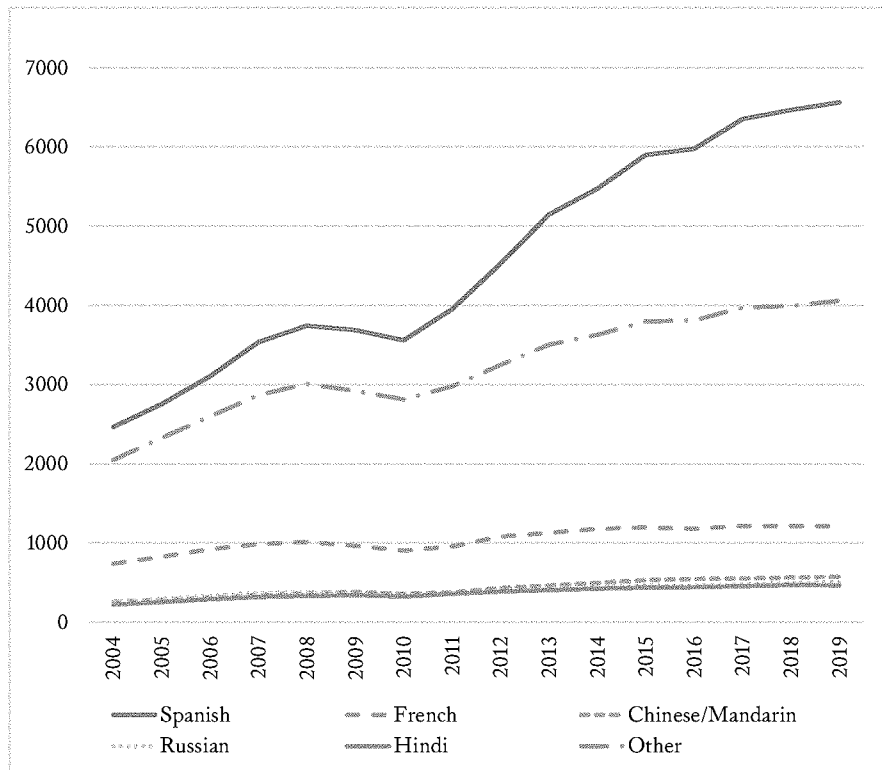
Figure 6. Self-Reported Ethnicity, CY2004–2019



Finally, between 2004 and 2019, there was an increase in the total number and percentage of AILA immigration lawyers who identified languages other than English in which they were proficient. Figure 7 illustrates the overall trend among the top five such languages reported. The number of lawyers who reported proficiency in languages other than English in 2004 was 5,989, constituting about 74% of the total number of lawyers. That number increased to about 13,380 in 2019, almost 90% of the total number of lawyers. Notably,

Spanish was the only language among the top five languages that increased in percentage terms between 2004 and 2019 (from 41% to 49%).

Figure 7. Proficient Languages, CY2004–2019



*Notes:* The “Other” category includes 145 languages that were not among the top five languages reported by members. Since members may select multiple Languages, the sum of the weighted members who chose each Language may exceed the total number of weighted members.

To summarize, the total number of immigration lawyers increased by more than 83% between 2004 and 2019, with an increasing proportion of lawyers providing legal services related to naturalization and deportation defense. While solo practice and small law firms remained by far the most common practice types between 2004 and 2019, there was a notable increase in the proportion of nonprofit organizations providing legal services during this period. Finally, there was an increase in the proportion of female and non-White lawyers, as well as an increase in the proportion of lawyers who reported being proficient in languages other than English.

Despite the increasing size and diversity of immigration lawyers, as indicated by our analysis of AILA membership, reports abound of the

continuing representation crisis.<sup>79</sup> According to a 2015 national study by Ingrid Eagly and Steven Shafer, only 37% of immigrants (including detained immigrants) were represented by counsel in removal cases decided between 2007 and 2012.<sup>80</sup> Figure 8 shows the representation rate released by the Transactional Records Access Clearing House (“TRAC”) for cases that were initiated between fiscal years 2004 and 2019 and resulted in a removal order (as of February 28, 2022).<sup>81</sup> According to TRAC, the representation rate among these cases was about 17% in fiscal year 2004 and 19% in fiscal year 2019.<sup>82</sup>

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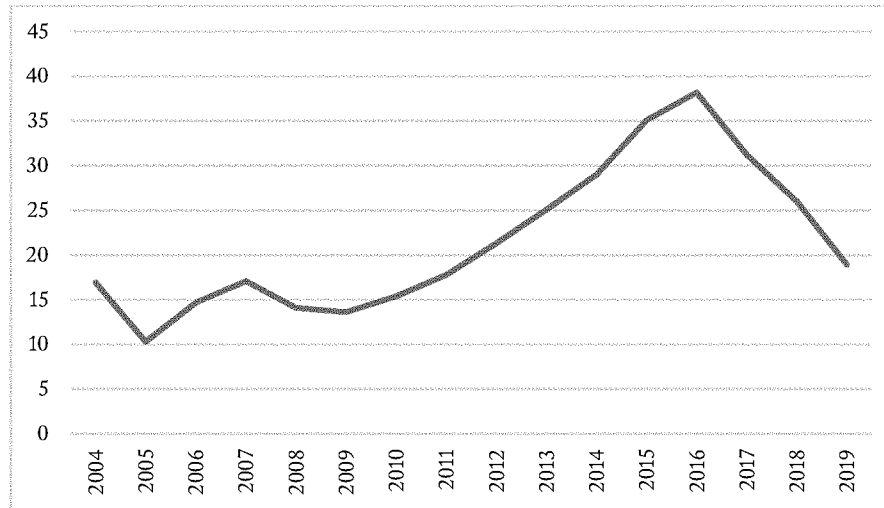
79. See, e.g., Erica Bryant, *Immigrants Facing Deportation Do Not Have the Right to a Publicly Funded Attorney. Here’s How To Change That.*, VERA INST. JUST. (Feb. 9, 2021), <https://www.vera.org/news/immigrants-facing-deportation-do-not-have-the-right-to-a-publicly-funded-attorney-heres-how-to-change-that> [<https://perma.cc/4LWV-FPWJ>]; HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., R47077, U.S. IMMIGRATION COURTS AND THE PENDING CASES BACKLOG 1 (2022), <https://crsreports.congress.gov/product/pdf/R/R47077> [<https://perma.cc/TW5Y-MA6Z>] (noting that as of the first quarter of FY2022, forty-seven percent of immigrants in removal proceedings were unrepresented by counsel).

80. Eagly & Shafer, *Access to Counsel*, *supra* note 5, at 16. For an explanation of the important difference in capturing representation rate at the case level versus proceedings level, and why the latter measure artificially inflates the representation rate, see *id.*

81. *State and County Details on Deportation Proceedings*, *supra* note 7. Case initiation refers to “the date [of] the DHS-issued ‘Notice to Appear’ (NTA) – the charging document issued by DHS to persons who face removal.” *About the Data*, *supra* note 7.

82. *State and County Details on Deportation Proceedings*, *supra* note 7 [<https://perma.cc/JHW2-DR6Q> (staff-uploaded archive)] (sort data by Current Status, Fiscal Year, and Percent) (under column heading “Immigration Court State” select “All”; under column heading “Outcome” select “Removal Order”; under column heading “Represented” select “Represented”).

Figure 8. Percent Represented Among Cases That Resulted in a Removal Order by Fiscal Year (FY) the Cases Were Initiated, FY2004–2019<sup>83</sup>



Notes: The data reflect case status as of February 28, 2022.

Among possible reasons for the continuing representation crisis, one of the likely possibilities is that the increase in the number of immigrants placed in removal proceedings in recent years far outpaced the growth in the supply of immigration lawyers specializing in removal defense. Another possibility (not mutually exclusive to the first possibility) is that there are factors above and beyond the availability of immigration lawyers that are associated with whether an immigrant in a removal proceeding will obtain legal representation. In the next part, we turn to an empirical investigation that takes the first step toward addressing that latter possibility.

## II. THE CURRENT STUDY

We begin with a discussion of the existing research on immigrant integration and on access to counsel that guided our decision to focus on certain predictors of legal representation in our empirical analyses. We then turn to a description of our data and analytical strategy.

### A. Predictors of Legal Representation

Existing research on barriers to immigrant integration and on access to counsel suggest that three factors in particular may be of central importance in

83. Figure 8 source: *Id.* Note that later fiscal years generally contain a higher number of cases that were still pending as of February 28, 2022.

determining whether an immigrant in a removal proceeding will obtain legal representation: geography, language, and social networks of immigrant respondents.

### 1. Geography

The immigration wave of the 1970s and 1980s was concentrated in a relatively small number of states (New York, California, Texas, Florida, and Illinois) and a handful of “gateway” metropolitan cities (New York, Los Angeles, Houston, Miami, and Chicago).<sup>84</sup> This pattern began to change in the 1990s, as immigrant populations began to disperse into new metropolitan areas, as well as suburban and rural locations throughout the West, Southeast, and Midwest.<sup>85</sup> Studies, for example, have documented the growing population of immigrants moving to rural communities in recent decades to work in low-wage and labor-intensive industries such as food processing, agriculture, construction, and manufacturing.<sup>86</sup>

Of close relevance to this study, research on immigrants in rural communities in the United States indicates that there are unique impediments to full incorporation of immigrants into rural and small-town community life. Those impediments include geographical isolation and lack of access to the internet, public transportation, language interpreters, and social services.<sup>87</sup> Research also shows that immigrants in rural areas are more likely to encounter nativism, intolerance, and anti-immigrant attitudes that may stem from heightened perceptions among local residents that immigration poses a cultural and economic threat.<sup>88</sup> Considered together, these existing studies suggest that

84. Charles S. Hirschman & Douglas S. Massey, *Places and Peoples: The New American Mosaic*, in *NEW FACES IN NEW PLACES: THE CHANGING GEOGRAPHY OF AMERICAN IMMIGRATION* 1, 2–3 (Douglas S. Massey ed., 2008).

85. *Id.* at 3; Audrey Singer, *Contemporary Immigrant Gateways in Historical Perspective*, 142 *DAEDALUS* 76, 82–85 (2013); *THE NAT'L ACADS. OF SCIS., ENG'G & MED., THE INTEGRATION OF IMMIGRANTS INTO AMERICAN SOCIETY* 211–12 (Mary C. Waters & Marisa Gerstein Pineau eds., 2015).

86. *NEW DESTINATIONS: MEXICAN IMMIGRATION IN THE UNITED STATES* 53 (V́ctor Zuñiga & Rubén Hernández-León, eds., 2005); HELEN B. MARROW, *NEW DESTINATION DREAMING: IMMIGRATION, RACE, AND LEGAL STATUS IN RURAL AMERICAN SOUTH* 59 (2011); Leif Jensen & Tse-Chuan Yang, *Taken by Surprise: New Immigrants in the Rural United States*, in *INTERNATIONAL MIGRATION & RURAL AREAS* 17, 27 (Myriam Simard & Birgit Jentsch eds., 2016).

87. *See, e.g.*, Rochelle L. Dalla & April Christensen, *Latino Immigrants Describe Residence in Rural Midwestern Meatpacking Communities: A Longitudinal Assessment of Social and Economic Change*, 27 *HISP. J. BEHAV. SCI.* 23, 35, 37 (2005); Daniel T. Lichter, *Immigration and the New Racial Diversity in Rural America*, 77 *RURAL SOCIO.* 3, 28 (2012); Silva Mathema, Nicole Prchal Svajlenka & Anneliese Hermann, *Revival and Opportunity Immigrants in Rural America*, *CTR. FOR AM. PROGRESS* (Sept. 2, 2018), <https://www.americanprogress.org/article/revival-and-opportunity/> [<https://perma.cc/6GY6-QTHC>]; Andrea Gómez Cervantes & Cecilia Menjivar, *Legal Violence, Health, and Access to Care: Latina Immigrants in Rural and Urban Kansas*, 61 *J. HEALTH & SOC. BEHAV.* 307, 317–19 (2020).

88. *See, e.g.*, Maria Sacchetti & Emily Guskin, *In Rural America, Fewer Immigrants and Less Tolerance*, *WASH. POST* (June 17, 2017), <https://www.washingtonpost.com/local/in-rural-america->



the urban-rural divide may be a critical distinction that shapes whether an immigrant in a removal proceeding will obtain legal representation.

Consistent with this expectation, Ingrid Eagly and Steven Shafer find in their seminal study of access to counsel in immigration court that immigrants with court hearings in immigration courts located in large cities had significantly higher representation rates than those in small cities or rural locations.<sup>89</sup> Eagly and Shafer further show that small cities and rural areas had a significantly lower supply of immigration lawyers, which suggests that insofar as the locations of immigration courts matter for representation rates, they do so because certain locations suffer from scarcity of immigration lawyers.<sup>90</sup> Building on this finding, we investigate whether geography—in terms of immigrant respondents' place of residence—is predictive of their chances of obtaining legal representation, above and beyond the availability of practicing immigration lawyers in close proximity to their places of residence.<sup>91</sup>

## 2. Language

Studies show that immigrants' ability to speak the host society's language is a key predictor of their educational and socioeconomic outcomes.<sup>92</sup> Scholars have also identified immigrants' ability to speak the host society's language as an important determinant of their level of civic engagement and their access to, and the use of, the justice system and public services.<sup>93</sup> As scholars of language rights have explained:

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fewer-immigrants-and-less-tolerance/2017/06/16/7b448454-4d1d-11e7-bc1b-fddb8359dee\_story.html [https://perma.cc/WKL9-VLTC (dark archive)]; Lisa R. Pruitt, *Latina/os, Locality, and Law in the Rural South*, 12 HARV. LATINO L. REV. 135, 154–58 (2008); Jensen & Yang, *supra* note 86, at 33.

89. Eagly & Shafer, *Access to Counsel*, *supra* note 5, at 40–41.

90. *Id.* at 42–43.

91. There is a large gap in our understanding of the relationship between geography and access to counsel for non-detained immigrants because, insofar as the importance of geography has been examined in current research on access to counsel for immigrants, the focus has almost exclusively been on remote (and often rural) locations of immigration detention facilities. *See generally* César Cuauhtémoc García Hernández, *Due Process and Immigrant Detainee Prison Transfers: Moving LPRs to Isolated Prisons Violates Their Right to Counsel*, 21 BERKELEY LA RAZA L.J. 17 (2011) (noting the issues with the use of rural, geographically isolated prisons to house detained immigrants); Zachary Manfredi & Joseph Meyers, *Isolated and Unreachable: Contesting Unconstitutional Restrictions on Communication in Immigration Detention*, 95 N.Y.U. L. REV. 130 (2020) (same).

92. *See, e.g.*, Christian Dustmann & Arthur van Soest, *Language Fluency and Earnings: Estimation with Misclassified Language Indicators*, 83 REV. ECON. & STAT. 663, 664 (2001); Sean-Shong Hwang, Juan Xi & Yue Cao, *The Conditional Relationship Between English Language Proficiency and Earnings Among U.S. Immigrants*, 33 ETHNIC & RACIAL STUD. 1620, 1644 (2010); Sarah Blanchard & Chandra Muller, *Gatekeepers of the American Dream: How Teachers' Perceptions Shape the Academic Outcomes of Immigrant and Language-Minority Students*, 51 SOC. SCI. RSCH. 262, 272–73 (2015); Barry R. Chiswick & Paul W. Miller, *International Migration and the Economics of Language*, in HANDBOOK OF THE ECONOMICS OF INTERNATIONAL MIGRATION 211, 257 (Barry R. Chiswick & Paul W. Miller eds., 2015).

93. *See, e.g.*, Jessica Sperling, *Improving Immigrants' Access to Public Services in the United States: Language Access Policy and Policy Implementation*, 10 CURRENT ISSUES LANG. PLAN. 405, 419 (2009);

Language barriers can prevent people from fully participating in civic life. People whose proficiency in English is limited may not realize what public services they have access to, may not be able to communicate their point of view at a town hall meeting, or may not understand information an agency wants the public to know.<sup>94</sup>

Of note, language minorities may face two related but distinct types of language barriers in our immigration system: “[O]ne of understanding the English language and one of understanding legal language.”<sup>95</sup> In addition, some language minorities may be illiterate in their own language.<sup>96</sup> A great deal of existing research and advocacy about language access in immigration courts relate to court interpreting programs.<sup>97</sup> For example, media and nongovernmental organization (“NGO”) reports have focused on problems of partial or low-quality interpretation provided by immigration courts to non-English speaking or limited-English proficient immigrants.<sup>98</sup> These issues have been of deep concern to immigration judges as well.<sup>99</sup> As Immigration Judge Ashley Tabaddor explained: “It’s a colossal waste of our time to now have to reorganize hundreds of thousands of cases to deal with language issues and then there’s no interpreter.”<sup>100</sup>

Scholarship on access to counsel has drawn attention to language barriers that non-English speaking immigrants face in order to explain why immigrant respondents need legal representation. That is, insofar as research on access to counsel has focused on language issues, it has been to argue that legal representation is needed to overcome the myriad disadvantages that non-

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Dominika Baran & Quinn Holmquist, *Immigrants Facing Linguistic Barriers in the U.S. Justice System: Case Studies from North Carolina*, in *LANGUAGE AND SOCIAL JUSTICE IN PRACTICE* 226, 232 (Netta Avineri, Laura R. Graham, Eric J. Johnson, Robin Conley Riner & Jonathan Rosa eds., 2018).

94. David Jung, Noemí O. Gallardo & Ryan Harris, *Language Access Laws and Legal Issues: A Local Official’s Guide*, 10 *HASTINGS RACE & POVERTY L.J.* 31, 32 (2013).

95. William E. Davis, *Language and the Justice System: Problems and Issues*, 10 *JUST. SYS. J.* 353, 356 (1985).

96. *Id.* at 357.

97. See, e.g., LAURA ABEL, BRENNAN CTR. FOR JUST., *LANGUAGE ACCESS IN IMMIGRATION COURTS* *passim* (2011), [https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language\\_Access\\_in\\_Immigration\\_Courts.pdf](https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf) [<https://perma.cc/ZC9T-EY8L>]; Maya P. Barak, *Can You Hear Me Now? Attorney Perceptions of Interpretation, Technology, and Power in Immigration Court*, 9 *J. MIGRATION & HUM. SEC.* 27 *passim* (2021); Denise N. Obinna, *Alone in a Crowd: Indigenous Migrants and Language Barriers in American Immigration*, *RACE & JUST.* 1 *passim* (2021).

98. See, e.g., Jennifer Medina, *Anyone Speak K’iche’ or Mam? Immigration Courts Overwhelmed by Indigenous Languages*, *N.Y. TIMES* (March 19, 2019), <https://www.nytimes.com/2019/03/19/us/translators-border-wall-immigration.html> [<https://perma.cc/UE6L-MKFE> (dark archive)]; ABEL, *supra* note 97, at 6–8.

99. See Medina, *supra* note 98.

100. *Id.*

English speaking immigrants face in the U.S. immigration system.<sup>101</sup> As Lucas Guttentag and Ahilan Arulanantham have observed: “The vulnerability, language impediments, and cultural barriers that immigrants face make fairness more difficult to achieve and oversight of systemic failures more difficult to accomplish. In this context, the presence of lawyers is the fundamental starting point for ensuring fairness in the deportation system.”<sup>102</sup> This study, by contrast, focuses on immigrant respondents’ English language proficiency to ask a logically prior question: Is language a significant predictor of immigrant respondents’ chances of obtaining legal representation in the first place?

### 3. Social Networks

According to research on immigrant integration, social networks primarily refer to personal relationships based on family, kin, friendship, and community ties.<sup>103</sup> Studies of immigrant incorporation show that ethnic social networks provide immigrants with a variety of social capital and resources necessary for immigrant adaptation into a host society.<sup>104</sup> For example, studies show that ethnic social networks are essential information sources that immigrants need to find jobs, access health care, and own businesses.<sup>105</sup> Studies also highlight the importance of ethnic social networks in facilitating immigrants’ legalization- and citizenship-seeking behavior. Jacqueline Hagan’s study of the legalization program under the Immigration Reform Control Act of 1986 among immigrants in the Maya community in Houston, Texas, finds that ethnic networks transmitted crucial information—particularly to male immigrants—about “the technical workings of the application process . . . and the short-term

101. See, e.g., Reyes, *supra* note 64, at 145 (arguing “for expanded access to competent counsel who can assist the immigrant in navigating both the complex law that will determine key issues of life and liberty and the complex cultural, educational and linguistic issues that pervade each immigration courtroom”); Baran & Holmquist, *supra* note 93, at 229–32 (providing case studies that highlight the important role that lawyers play for non-English speaking immigrants).

102. Lucas Guttentag & Ahilan Arulanantham, *Extending the Promise of Gideon: Immigration, Deportation, and the Right to Counsel*, 39 HUM. RTS. 14, 16 (2013).

103. Monica Boyd, *Family and Personal Networks in International Migration: Recent Developments and New Agendas*, 23 INT’L MIGRATION REV. 638, 639 (1989).

104. See, e.g., Alberto Palloni, Douglas S. Massey, Miguel Ceballos, Kristin Espinosa & Michael Spittel, *Social Capital and International Migration: A Test Using Information on Family Networks*, 106 AM. J. SOCIO. 1262, 1295–96 (2001); Sara R. Curran & Estela Rivero-Fuentes, *Engendering Migrant Networks: The Case of Mexican Migration*, 40 DEMOGRAPHY 289, 303 (2003); Jacqueline Hagan, Karl Eschbach & Nestor Rodriguez, *U.S. Deportation Policy, Family Separation, and Circular Migration*, 42 INT’L MIGRATION REV. 64, 84–85 (2008).

105. Thomas Bailey & Roger Waldinger, *Primary, Secondary, and Enclave Labor Markets: A Training Systems Approach*, 56 AM. SOCIO. REV. 432, 443–44 (1991); James R. Elliott, *Referral Hiring and Ethnically Homogeneous Jobs: How Prevalent Is the Connection and for Whom?*, 30 SOC. SCI. RSCH. 401, 420 (2001); Cecilia Menjivar, *The Ties That Heal: Guatemalan Immigrant Women’s Networks and Medical Treatment*, 36 INT’L MIGRATION REV. 437, 458–60 (2002); Rebeca Raijman & Marta Tienda, *Ethnic Foundations of Economic Transactions: Mexican and Korean Immigrant Entrepreneurs in Chicago*, 26 ETHNIC & RACIAL STUD. 783, 797–98 (2003).

benefit of applying.”<sup>106</sup> Philip Yang, in his study of naturalization, finds support for the hypothesis that ethnic social networks provide “members with information concerning the benefits, procedures and experiences of naturalization.”<sup>107</sup> Maria Abascal finds that Latino immigrants who reside in counties with a high concentration of naturalized coethnics are more likely to naturalize because such networks not only transmit critical knowledge about naturalization, but they also foster a stronger sense of American identity among Latino immigrants.<sup>108</sup>

The foregoing discussion suggests that conational social networks might also play an important role in determining whether an immigrant in a removal proceeding will obtain legal representation. This might be because such networks can provide immigrant respondents with information and resources useful for retaining a lawyer, enforce social norms that promote the view that lawyers are necessary and desirable in fighting removal, and offer institutionalized resources (such as community referral lists) that facilitate the matching of individual immigrant respondents to individual lawyers. Ingrid Eagly and Steven Shafer, in their national study of access to counsel, highlight some of these possible functions of ethnic social networks in conjecturing about the reasons behind differences in legal representation rates across national origin groups.<sup>109</sup> We build on this insight by directly testing the relationship between the size of conational social networks within a given immigrant respondent’s community and their odds of obtaining legal representation.

#### B. *Data*

This Article uses three original datasets that we collected and coded for the purposes of this study: Attorney Data, Respondent Data, and Contextual Data. Below, we describe each of these datasets in detail and the measures that we coded from the datasets. Appendix Table A contains a summary description of the measures that we use in our analyses. The Methods Appendix contains a more detailed discussion of our coding and analytical decisions. Our analyses focus on removal proceedings that were pending or completed in immigration courts in calendar year 2019. The total number of proceedings included in our analyses is 851,188 proceedings.

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106. Jacqueline Maria Hagan, *Social Networks, Gender, and Immigrant Incorporation: Resources and Constraints*, 63 AM. SOCIO. REV. 55, 63 (1998).

107. Philip Q. Yang, *Explaining Immigrant Naturalization*, 28 INT’L MIGRATION REV. 449, 457 (1994).

108. Maria Abascal, *Tu Casa, Mi Casa: Naturalization and Belonging Among Latino Immigrants*, 51 INT’L MIGRATION REV. 291, 316–17 (2017).

109. Eagly & Shafer, *Access to Counsel*, *supra* note 5, at 45.

### 1. Attorney Data

We built our Attorney Data by first cleaning the AILA data consisting of information on attorneys who are members of AILA. These member attorneys are spread throughout the United States and U.S. territories. For the analysis presented below, we included only those attorneys who were active members during calendar year 2019, because reliable attorney location information is available only for the most recent year. To be considered active for the year, a member must have either created or renewed their membership during that year. We excluded AILA members whose membership types were “Student” or “Complimentary.”<sup>110</sup> Included in our analysis are AILA member attorneys whose membership types were “Regular,” “Non-profit,” “Retired,” “Senior,” and “Other.”<sup>111</sup>

Next, we compiled geolocation information on each attorney using their work addresses as reported in the AILA data. This step required that we match the ZIP code associated with the attorneys’ address to a ZIP Code Tabulation Area (“ZCTA”), which are the spatial units most analogous to ZIP Codes; in most cases, the ZCTA will be the same as its ZIP Code.<sup>112</sup> The ZIP Code-ZCTA matching was necessary because ZIP codes relate to mail delivery routes and do not map directly to spatial units.<sup>113</sup> To match ZIP codes to ZCTAs, we used a crosswalk file produced by the Missouri Census Data Center based on the 2010 decennial census.<sup>114</sup> We then used the attorneys’ ZCTA information (together with the immigrant respondents’ ZCTA information, as described below) to create the *Attorney-to-Respondent Ratio* described below.

### 2. Respondent Data

Our Respondent Data comes from the EOIR, which provides “raw data files from the agency’s case file electronic database.”<sup>115</sup> A case may have more than one proceeding. Thus, for each pending or completed case in calendar year 2019, we kept one proceeding per case by prioritizing the most recent proceeding within a case. As discussed earlier, the Respondent Data does not

110. See *supra* note 74.

111. See *supra* note 75.

112. See Bernie Langer, *What Are Zip Code Tabulation Areas?*, POL’Y MAP (Mar. 10, 2016), <https://www.policymap.com/blog/what-are-zip-code-tabulation-areas> [<https://perma.cc/5QL8-A6E6>] (“More than half of all ZCTAs share more than 90% of their area with their associated Zip Code. Over 70% of ZCTAs share at least 80% of their area with their Zip Codes.”).

113. *ZIP Code Tabulation Areas (ZCTAs)*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/zctas.html> [<https://perma.cc/RF7U-NYJS>] (last updated May 16, 2022).

114. *All About ZIP Codes: ZCTA 2010 Supplement*, MO. CENSUS DATA CTR., <https://mcde.missouri.edu/geography/ZCTAs-2010.html> [<https://perma.cc/D2HD-YETE>] (last updated May 16, 2022) [hereinafter *ZCTA 2010*].

115. *FOIA Library: EOIR Case Data*, U.S. DEP’T JUST., <https://www.justice.gov/eoir/foia-library-0> [<https://perma.cc/GPL9-D2U7>] (last updated Sept. 2022).

contain information on detained immigrants' places of residence before their detention; thus, we excluded detained immigrant respondents. This means that only those respondents whose custody status was "Never Detained" or "Released" as reported in the EOIR data were included in our analysis.

Rider cases, which generally relate to dependent family members who are also in removal proceedings, were excluded from the analysis. To geolocate the immigrant respondents, we matched the respondents' residential ZIP codes to their corresponding ZCTAs.<sup>116</sup> We used the immigrant respondents' ZCTA information (together with the attorneys' ZCTA information, as described above) to create the *Attorney-to-Respondent Ratio*. We also coded the immigrant respondents' primary language (*English Speaking*) and the size of their conational population within their counties (*Conational Population*).

### 3. Contextual Data

Our Contextual Data comes from the five-year American Community Survey ("ACS") data from 2019, which corresponds to the year that the EOIR proceedings in our sample were pending or completed. This Contextual Data contains a variety of information about the characteristics of the communities in which the immigrant respondents were residing at the time of their removal proceedings. This information includes, for example, poverty rate and unemployment rate. We used these measures to construct the *Concentrated Disadvantage Index*, as described below.

#### C. Coding and Analytical Approach

The outcome of interest in our analysis, *Represented*, is whether an immigrant respondent had legal representation in a given proceeding, as reported in the Respondent Data. The key predictors of *Represented* that we examine through our descriptive and regression analyses are: *Urbanicity*, *English Speaking*, and *Conational Population*. *Urbanicity* allows us to examine the relationship between immigrant respondents' place of residence and the likelihood of obtaining legal representation. *English Speaking* allows us to examine the relationship between immigrant respondents' primary language and the likelihood of obtaining legal representation. *Conational Population*, which serves as a proxy measure of the size of immigrant respondents' ethnic social networks,<sup>117</sup> allows us to examine the relationship between immigrant

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116. *ZCTA 2010*, *supra* note 114.

117. Other studies have measured ethnic social networks by using conationality (i.e., common nationality) as a marker of a shared background. See, e.g., Anna Piil Damm, *Ethnic Enclaves and Immigrant Labor Market Outcomes: Quasi-Experimental Evidence*, 27 J. LAB. ECON. 281, 289 (2009); Lori A. Beaman, *Social Networks and the Dynamics of Labour Market Outcomes: Evidence from Refugees Resettled in the U.S.*, 79 REV. ECON. STUD. 128, 142 (2012). We recognize that national origin groups are not monolithic. There may be important social, cultural, political, and economic differences across

respondents' social networks and the likelihood of obtaining legal representation.

*Urbanicity* captures the level of urbanicity of the respondents' residences. We created *Urbanicity* by using the National Center for Health Statistics ("NCHS") Urban-Rural Classification Scheme for Counties published by the U.S. Centers for Disease Control and Prevention.<sup>118</sup> This classification scheme contains six levels of urbanicity: large central metro; large fringe metro; medium metro; small metro; micropolitan; and noncore.<sup>119</sup> Following Kang-Brown and Ram Subramanian's approach, we recoded these six categories into the following four categories: Large Metro-Urban; Large Metro-Suburban; Medium & Small Metro; and Rural.<sup>120</sup> *English Speaking* captures whether an immigrant respondent's primary language, as reported in the Respondent Data, is English or some other language. *Conational Population* captures the size of the conational population in each immigrant respondent's county. Although online or virtual communities allow for conational networking beyond geographically bounded neighborhoods, the knowledge of legal service providers tends to be highly location specific.<sup>121</sup> We generated *Conational Population* by using the five-year ACS data from 2019.

The other variables in our analyses are *Attorney-to-Respondent Ratio*, *Concentrated Disadvantage Index*, and *Nationality*. *Attorney-to-Respondent Ratio* captures the relative availability of immigration lawyers in each immigrant respondent's ZCTA. Thus, we treat *Attorney-to-Respondent Ratio* as a proxy for the immigrant respondents' potential access to counsel. The higher the ratio, the greater the number of attorneys per immigrant respondent. We calculated the *Attorney-to-Respondent Ratio* (a ratio of the number of attorneys to respondents within a 50-mile radius of each respondent) using the two-step

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subgroups within any given national origin group that might render *Conational Population* only a rough proxy for the size of actual ethnic networks.

118. NCHS *Urban-Rural Classification Scheme for Counties*, U.S. CTRS. FOR DISEASE CONTROL & PREV., [https://www.cdc.gov/nchs/data\\_access/urban\\_rural.htm](https://www.cdc.gov/nchs/data_access/urban_rural.htm) [https://perma.cc/8AEW-998F] (last updated June 1, 2017).

119. DEBORAH D. INGRAM & SHEILA J. FRANCO, U.S. DEP'T OF HEALTH & HUM. SERVS., VITAL HEALTH STATISTICS: 2013 NCHS URBAN-RURAL CLASSIFICATION SCHEME FOR COUNTIES 3-4 (2014), [https://www.cdc.gov/nchs/data/series/sr\\_02/sr02\\_166.pdf](https://www.cdc.gov/nchs/data/series/sr_02/sr02_166.pdf) [https://perma.cc/685T-VWUF].

120. For a description of this reclassification approach, see JACOB KANG-BROWN & RAM SUBRAMANIAN, VERA INST. OF JUST., OUT OF SIGHT: THE GROWTH OF JAILS IN RURAL AMERICA 8 (2017), <https://www.vera.org/downloads/publications/out-of-sight-growth-of-jails-rural-america.pdf> [https://perma.cc/ZWE2-ZDUK].

121. Of note, research on access to healthcare shows that virtual or online social networks have become increasingly important in that field: "Social networking is providing a new landscape for patients to assemble health information, relatively free from the constraints of traditional health care." Frances Griffiths, Jonathan Cave, Felicity Boardman, Justin Ren, Teresa Pawlikowska, Robin Bell, Aileen Clarke & Alan Cohen, *Social Networks – The Future for Health Care Delivery*, 75 SOC. SCI. & MED. 2233, 2233 (2012).

floating catchment area method (“2SFCA”).<sup>122</sup> 2SFCA is a methodological innovation that was originally developed to measure spatial accessibility to health care.<sup>123</sup> Our application of this method assumes that immigrant respondents in a given ZCTA have access to attorneys up to fifty miles (straight line distance) away, but also that the number of attorneys available to this ZCTA must be scaled down to reflect the reality that attorneys may serve clients in multiple ZCTAs. We conducted supplemental analyses to confirm that our results remained robust to alternative distance measures (10-mile radius, 100-mile radius, and 200-mile radius).

*Concentrated Disadvantage Index* captures the degree of socioeconomic disadvantage associated with each immigrant respondent’s community. We use this index as a control variable in each of our regression models given that socioeconomic characteristics of a respondent’s community can confound the relationship between our outcome and key predictors of interest. For example, immigrant respondents in rural communities are more likely to reside in socioeconomically disadvantaged communities,<sup>124</sup> which in turn may lower their chances of obtaining legal representation. By controlling for the effect of this potential confounder in our regression models, we are better able to isolate the true relationship between each of the key predictors of interest in this study and the likelihood of obtaining legal representation.

To generate the *Concentrated Disadvantage Index*, we followed Robert Sampson and colleagues’ approach and combined the following ZCTA-level community characteristics into a single aggregate measure: *Percent Individuals Below the Poverty Line*, *Percent Households Receiving Public Assistance*, *Percent Female-Headed Families*, *Percent Unemployed*, *Percent Less Than Age 18*, *Percent Black*, *Percent Latino*, *Percent Foreign-Born*, *Percent Less Than High School Education*, and *Percent Owner-Occupied Home*.<sup>125</sup> We collected these measures from the five-year 2019 ACS data and applied factor analysis to combine them into a single index.

Finally, *Nationality* refers to immigrant respondents’ country of origin. A large majority—about seventy-two percent of our analytical sample, originate

122. For a discussion on the evolution of floating catchment area methods, see Wei Luo & Fahui Wang, *Measures of Spatial Accessibility to Health Care in a GIS Environment: Synthesis and a Case Study in the Chicago Region*, 30 ENV’T & PLAN. B 865, 870–73 (2003).

123. For enhancements to 2SFCA, see generally Wei Luo & Yi Qi, *An Enhanced Two-Step Floating Catchment Area (E2SFCA) Method for Measuring Spatial Accessibility to Primary Care Physicians*, 15 HEALTH & PLACE 1100 (2009).

124. Linda M. Burton, Daniel T. Lichter, Regina S. Baker & John M. Eason, *Inequality, Family Processes, and Health in the “New” Rural America*, 57 AM. BEHAV. SCIENTIST 1128, 1130–34 (2013) (describing rural poverty and concentration of racial minorities and immigrants in impoverished rural communities).

125. See Robert J. Sampson, Stephen W. Raudenbush & Felton Earls, *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCI. 918, 920 (1997).



from Mexico and the three Central American countries of El Salvador, Guatemala, and Honduras. *Nationality* has the following five categories: Mexico, El Salvador, Guatemala, Honduras, and Other.

To examine the relationship between *Represented* and each of the key predictors, we estimated a series of binary logistic regression models using proceedings as our unit of analysis. Binary logistic regression is commonly used to predict the odds of an event of interest (in this case, obtaining legal representation) occurring or not occurring. This full model takes the form:

$$\ln\left(\frac{p_i}{1-p_i}\right) = \beta_0 + \beta_1 x_i + \beta_2 \text{Ratio}_i + \beta_3 \text{CDI}_i + \beta_4 \text{Nationality}_i + \varepsilon_i$$

where  $p_i$  is the probability of obtaining representation,  $x_i$  is the predictor of interest (*Urbanicity*, *English Speaking*, or *Conational Population*), and  $\beta_1$  estimates the average effect of the predictor on the log-odds ratio. For each model,  $\beta_2$ ,  $\beta_3$ , and  $\beta_4$  estimate the effect of *Attorney-to-Respondent Ratio*, *Concentrated Disadvantage Index*, and *Nationality*, respectively.  $\beta_0$  estimates the intercept and  $\varepsilon_i$  is an error term.

### III. STUDY FINDINGS

We now turn to our empirical analysis of the predictors of legal representation among non-detained immigrant respondents in removal proceedings.<sup>126</sup> Each section that follows focuses on our findings relating to the three key predictors of interest in this study: geography, language, and social networks of immigrant respondents whose removal cases were pending or completed in immigration courts in 2019.

At the outset, we note that *Attorney-to-Respondent Ratio* is positive and statistically significant in all of our regression models predicting the odds of legal representation. This result suggests that, as expected, the relative supply of immigration lawyers in a given immigrant respondent's community is a significant predictor of whether that immigrant will obtain legal representation.<sup>127</sup> However, the central question that our discussion below addresses is whether the measures relating to the immigrant respondents' geography, language, and social networks are significant predictors of legal

126. The average legal representation rates shown below are higher than the average legal representation rates shown in Figure 8 because our analyses focus on non-detained immigrants, whereas Figure 8 is inclusive of detained immigrants. In addition, Figure 8 focuses only on cases resulting in removal orders, and those cases are more likely to lack legal representation than those that are granted relief.

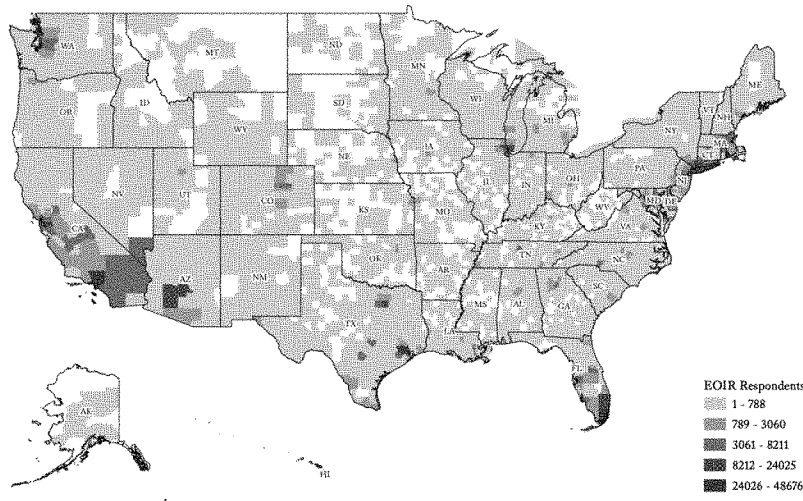
127. A parallel set of findings exist in the large body of research on the relationship between distance to healthcare providers and health outcomes or healthcare utilization. For a review, see Charlotte Kelly, Claire Hulme, Tracey Farragher & Graham Clarke, *Are Differences in Travel Time or Distance to Healthcare for Adults in Global North Countries Associated with an Impact on Health Outcomes? A Systematic Review*, 6 *BMJ OPEN* 1 *passim* (2016).

representation, controlling for *Attorney-to-Respondent Ratio* and the other potential confounders (*Concentrated Disadvantage Index* and *Nationality*).

#### A. *Geography as Destiny*

The high level of geographical diversity that scholars have documented about contemporary immigrant settlement patterns is reflected in Figure 9, which displays where the immigrant respondents were residing at the time of their removal proceedings. In short, the Respondent Data shows a wide dispersion of immigrant respondents throughout the United States, though there are pockets of concentration on each side of the coast and in Southwestern border areas.

Figure 9. Distribution of Immigrant Respondents by County, CY2019<sup>128</sup>



Next, we examine whether there is a significant bivariate relationship between *Represented* and *Urbanicity*. Figure 10 shows representation rates (percent of immigrant respondents who are represented)<sup>129</sup> by urban-rural classification of immigrant respondents' places of residence at the county level.

128. Figure source: Respondent Data. We used the Jenks natural breaks classification method to create the cut points shown in the figure's legend. This method seeks to minimize the variance within groups and maximize the variance between groups. See GEORGE F. JENKS, UNIV. OF KAN., OPTIMAL DATA CLASSIFICATION FOR CHOROPLETH MAPS 5 (1977).

129. The unit of analysis is proceedings. However, for ease of reference, we refer to immigrants rather than proceedings when discussing representation rates and the likelihood of obtaining representation. It is theoretically possible that some immigrants may have been involved in more than one proceeding.

As shown in Figure 10, representation rates steadily decrease as we move down the categories from large urban areas to rural areas.

Figure 10. Percent Represented by Urbanicity, CY2019<sup>130</sup>

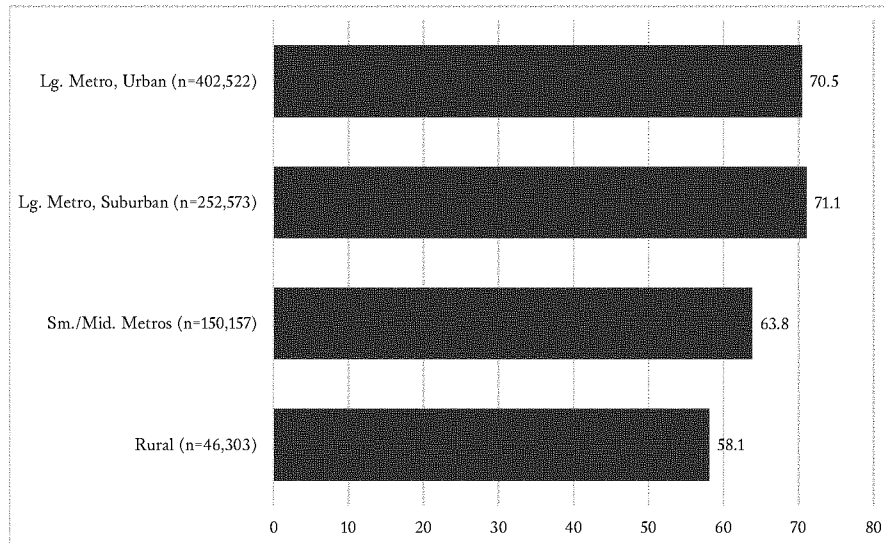


Table 1 shows the results of our regression analysis in which we examine the effect of *Urbanicity* on immigrant respondents' odds of obtaining legal representation, controlling for potential confounders. Starting with Model 1 of Table 1, we first note that every one-unit increase in *Attorney-to-Respondent Ratio* is associated with about a 10% increase in the odds of obtaining legal representation ( $100 \times [\text{odds ratio} - 1]$ ), controlling for *Urbanicity*. Second, Model 1 of Table 1 also shows that while the odds of obtaining legal representation in Large Metro-Suburban areas are not statistically different from those in Large Metro-Urban areas, the odds in Medium & Small Metro and Rural areas are significantly lower than those in Large Metro-Urban areas (about 77% and 63% lower, respectively), controlling for *Attorney-to-Respondent Ratio*.

130. Figure source: Respondent Data.

Table 1: Odds Ratios from Logistic Models of Effect of Urbanicity on Legal Representation

Variables	Model 1	Model 2
Urbanicity <sup>+</sup>		
Large Metro-Suburban	1.029	1.105 <sup>*</sup>
Medium & Small Metro	0.771 <sup>***</sup>	0.805 <sup>***</sup>
Rural	0.630 <sup>***</sup>	0.693 <sup>***</sup>
Attorney-to-Respondent Ratio (per 100 Respondents)	1.096 <sup>***</sup>	1.053 <sup>***</sup>
Concentrated Disadvantage Index		√
Nationality		√
Log Likelihood	-524882.8	-493661.24
N	851188	851188

Notes: <sup>+</sup> Reference category is Large Metro-Urban. Standard errors are clustered by ZCTA. \* p < 0.05; \*\* p < 0.01; \*\*\* p < 0.001 (two-tailed tests).

Finally, Model 2 of Table 1 shows that the results in Model 1 of Table 2 remain robust to the addition of *Concentrated Disadvantage Index* and *Nationality* to the regression model.<sup>131</sup> In short, holding constant the level of socioeconomic disadvantage of the communities in which the immigrant respondents reside, their nationality, and the availability of immigration lawyers in close proximity to their place of residence, the odds of legal representation in Medium & Small Metro and Rural areas remain significantly lower than the odds of legal representation in Large Metro-Urban areas.

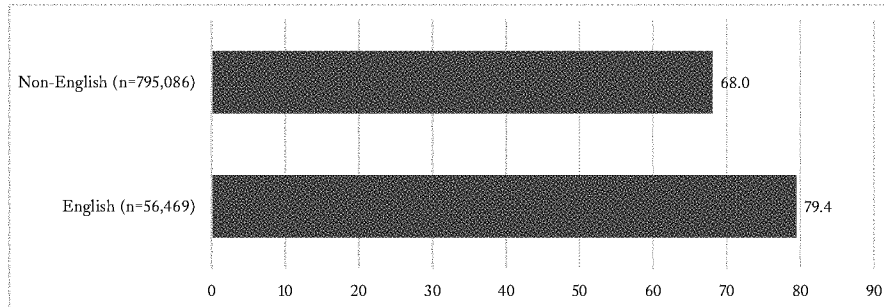
#### B. *Language as Destiny*

Given the nature and significance of language-related issues that we have discussed above for immigrant communities generally, and for immigrants in removal proceedings in particular, a natural question that arises is whether and to what extent language barriers might create hurdles for immigrant respondents in obtaining legal representation. Thus, we first consider the bivariate relationship between *Represented* and *English Speaking*. Figure 11

131. *Urbanicity* might be correlated with occupations, and certain occupations might impose greater challenges for immigrants in obtaining legal services. For example, farm work is likely to be more prevalent in rural areas, and many farm workers work fifteen-hour days without breaks. Mary Hoopes, *Regulating Marginalized Labor*, 73 HASTINGS L.J. 1041, 1043 (2022). It is possible, then, that *Urbanicity* might be partially picking up on occupational effects, which *Concentrated Disadvantage Index* and *Nationality* do not fully control for.

displays representation rates by whether the immigrant respondent's primary language is English. As shown in Figure 11, representation rates are substantially higher for immigrant respondents whose primary language is English (over 79%), compared to non-English speaking immigrant respondents (68%).

Figure 11. Percent Represented by English v. Non-English Speaking Respondents, CY2019<sup>132</sup>



Next, we analyze whether this bivariate relationship remains robust even when we control for *Attorney-to-Respondent Ratio*, *Concentrated Disadvantage Index*, and *Nationality*. Table 2 shows the results of those regression analyses. Model 1 of Table 2 shows that every one-unit increase in *Attorney-to-Respondent Ratio* corresponds to about a 13% increase in the odds of obtaining legal representation, controlling for *English Speaking*. Model 1 of Table 2 also shows that immigrant respondents whose primary language is English have almost 75% higher odds of obtaining legal representation compared to non-English speaking immigrant respondents, controlling for *Attorney-to-Respondent Ratio*.

132. Figure source: Respondent Data.

Table 2: Odds Ratios from Logistic Models of Effect of Language on Legal Representation

Variables	Model 1	Model 2
English Speaking	1.745***	1.074*
Attorney-to-Respondent Ratio (per 100 Respondents)	1.125***	1.082***
Concentrated Disadvantage Index		√
Nationality		√
Log Likelihood	-525208.64	-495067.19
N	851188	851188

Notes: Reference category is English. Standard errors are clustered by ZCTA. \*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$  (two-tailed tests).

Finally, Model 2 of Table 2 shows that the odds of obtaining legal representation remain significantly higher for immigrant respondents whose primary language is English, even after controlling for *Concentrated Disadvantage* and *Nationality*.

### C. *Social Networks as Destiny*

To begin to examine the relationship between the size of immigrant respondents' ethnic social networks and the likelihood of their obtaining legal representation, Figure 12 shows variations in representation rates across different levels of conational populations at the ZCTA level. Recall that the conational population size is a measure of the total number of immigrants residing in each immigrant respondent's community who share the same nationality as the immigrant respondent. As shown in Figure 12, representation rates steadily increase as the conational population size increases.

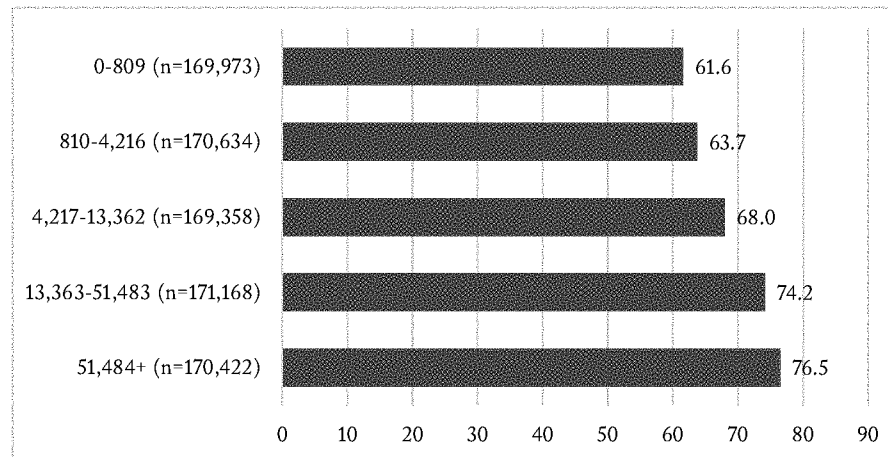
Figure 12. Percent Represented by Conational Populations, CY2019<sup>133</sup>

Table 3 shows the results of our regression models examining the effect of the size of the conational population on the likelihood of obtaining legal representation, controlling for potential confounders. Model 1 of Table 3 shows that an increase in *Attorney-to-Respondent Ratio* significantly increases the odds of legal representation, controlling for the size of the conational population in the communities where the immigrant respondents reside. Model 1 of Table 3 also shows that as the conational population size increases, the odds of obtaining legal representation increase, controlling for *Attorney-to-Respondent Ratio*.

Table 3: Odds Ratios from Logistic Models of Effect of Conational Population on Legal Representation

Variables	Model 1	Model 2
Conational Population (ln)	1.126***	1.056***
Attorney-to-Respondent Ratio (per 100 Respondents)	1.116***	1.078***
Concentrated Disadvantage Index		√
Nationality		√
Log Likelihood	-498411.57	-474070.94
N	816513	816513

Notes: Standard errors are clustered by ZCTA. \*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$  (two-tailed tests).

133. Figure source: Respondent Data.

Finally, Model 2 of Table 3 shows that the odds of obtaining legal representation increase as the conational population size in a given immigrant respondent's community increases, even after controlling for *Attorney-to-Respondent Ratio*, *Concentrated Disadvantage Index*, and *Nationality*.

#### IV. POLICY IMPLICATIONS

This study contributes several new insights to the study of access to counsel. First, our analysis of the AILA membership suggests that the size and diversity of the U.S. immigration bar grew rapidly between 2004 and 2019. Yet, the legal representation rate among immigrants in removal proceedings remained very low during this period. Second, our analysis identifies a number of factors as significant predictors of whether non-detained immigrant respondents in removal proceedings will obtain legal representation. Consistent with prevailing wisdom, our analysis confirms that the availability of immigration lawyers in close proximity to a given immigrant respondent's place of residence is a significant predictor of whether they will obtain legal representation. However, our analysis also reveals other important predictors of legal representation: we find that an immigrant respondent's residence in a small town or a rural area, their English proficiency, and the size of their conational social networks are also significant predictors of legal representation, even after controlling for the availability of immigration lawyers in their communities and other potential confounders.

What are the policy implications of these findings? Before proceeding to that discussion, two notes are in order. First, there is a large and developed body of empirical research outside the literature on access to counsel that is particularly relevant and illuminating for our discussion. That body of research examines "rural healthcare deserts"<sup>134</sup> and the determinants of healthcare access and healthcare utilization. For example, many studies in that area of research investigate the relationship between an individual's proximity to healthcare providers on the one hand, and their healthcare utilization and health outcomes on the other; most of those studies find that the closer an individual is to health care providers, the better their healthcare utilization and health outcomes.<sup>135</sup> This field of health research is motivated by a parallel set of concerns as research on access to counsel, such as broadening people's access to essential services and reducing inequities and inequalities that exist in different group's ability and willingness to obtain those services. For that reason, we reference studies on healthcare access whenever they are helpful to our discussion, although to date,

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134. See Michele Statz & Kaylie Evers, *Spatial Barriers as Moral Feelings: What Rural Distance Can Teach Us About Women's Health and Medical Mistrust*, 64 HEALTH & PLACE 1, 1 (2020) (defining "rural health care deserts" as "U.S. counties without hospitals or providers").

135. For a review, see Kelly et al., *supra* note 127, at 5–6.



these two sets of scholarship have developed in relative isolation from one another.<sup>136</sup>

Second, below we explore in broad strokes how our study findings can inform data-driven policy-making in this area. In doing so, we are mindful that meaningful solutions to the representation crisis require an in-depth understanding of immigrants' own views and assessments about their needs and the utility of any new initiatives.<sup>137</sup> Such an approach recognizes the importance of centering the voices of subordinated groups and empowering their collective agency in addressing problems of access to justice.<sup>138</sup> In addition, centering the lived experiences of immigrants themselves who are attempting to navigate our legal system will facilitate the development of a systems approach that is necessary to solve the representation crisis.<sup>139</sup> A systems approach, as defined by health researchers, identifies “the multiplicity of elements interacting to impact an outcome of interest and implements processes or tools in a holistic way.”<sup>140</sup>

#### A. *Geographical Isolation*

We begin with a discussion of our finding pertaining to the relationship between immigrant respondents' place of residence and the likelihood of obtaining legal representation. As a preliminary matter, it is useful to note that research on rural access to justice has documented lawyer shortages across rural

136. Some scholars have begun to integrate the two sets of literature in new and innovative ways. See, e.g., Michele Statz & Paula Termuhlen, *Rural Legal Deserts Are a Critical Health Determinant*, 110 AM. J. PUB. HEALTH L. & ETHICS 1519, 1519 (2020) (examining the ways that “rural legal deserts,” or rural areas experiencing attorney shortages” serve “as a meaningful health determinant”).

137. For an innovative recent study that illustrates research efforts to gather this type of data from an immigrant community, see Luz E. Herrera, Amber Baylor, Nandita Chaudhuri & Felipe Hinojosa, *Evaluating Legal Needs*, 36 NOTRE DAME J.L. ETHICS & PUB. POL'Y 175, 192–96 (2022) (using quantitative and qualitative research methods to explore legal needs of residents in the Rio Grande Valley of Texas).

138. See generally GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992) (advocating for a new style of progressive lawyering that centers the client and their experiences); Sameer Ashar & Annie Lai, *Access to Power*, 148 DAEDALUS 82, 83 (2019) (“[Access to justice] initiatives that seek to center and build up the capacity of relatively powerless people to discern their individual and group interests and to take collective action to further those interests hold greater promise for altering the current configuration of power.”).

139. Cf. Emily Ryo, *The Promise of a Subject-Centered Approach to Understanding Immigration Noncompliance*, 5 J. MIGRATION & HUM. SEC. 285, 285 (2017) (discussing the importance of applying an approach to the study of immigration noncompliance that centers the “beliefs, values, and perceptions of individuals whose behavior the law seeks to regulate”).

140. Alexander Komashie, James Ward, Tom Bashford, Terry Dickerson, Gulsum Kubra Kaya, Yuanyuan Liu, Isla Kuhn, Aslı Günay, Katharina Kohler, Nicholas Boddy, Eugenia O’Kelly, Joseph Masters, John Dean, Catherine Meads & P. John Clarkson, *Systems Approach to Health Service Design, Delivery and Improvement: A Systematic Review and Meta-Analysis*, 11 BMJ OPEN 1, 2 (2020).

areas in the United States.<sup>141</sup> Thus, it may be natural to assume that the small town or rural disadvantage in obtaining legal representation simply boils down to a relative scarcity of immigration lawyers in small towns and rural areas. But our analysis shows that immigrant respondents' place of residence is a significant predictor of legal representation *regardless* of attorney-to-respondent ratios (as well as the relative socioeconomic disadvantage of the communities and immigrant respondents' nationality). This finding highlights the importance of considering specific attributes of small towns and rural areas—other than lawyer shortages—that may be operating as a barrier to obtaining representation for immigrant respondents.

In the growing body of research on rural “health care deserts,” scholars have converged on a number of key community characteristics—other than the shortage of health professionals and facilities—that impede rural populations' access to healthcare: lack of access to the internet; poverty and inadequate insurance coverage; distrust of the medical profession among residents; and lack of public transportation.<sup>142</sup> Likewise, Lisa Pruitt and colleagues, in their pioneering work on access to justice, point to a similar set of challenges facing rural populations in seeking access to counsel and courts. They write: “Rural residents who seek access to existing lawyers and courts often must overcome . . . barriers, including vast distances, insufficient (or nonexistent) public transit, and lack of reliable communication tools, including cell phone service and broadband internet.”<sup>143</sup>

Both sets of research that we have summarized above highlight the multidimensionality of the disadvantages that rural communities face, many of which are due in part to underdeveloped physical, institutional, and digital infrastructure of those communities.<sup>144</sup> In many ways, these disadvantages resemble the type of disadvantages that immigrant detainees face—from impediments to physical mobility to restrictions on access to technology.

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141. See, e.g., Catherine Albiston, Su Li & Laura Beth Nielsen, *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 *LAW & SOC. INQUIRY* 990, 1007–08 (2017); Lisa Pruitt & Andrew Davies, *Investigating Access to Justice, the Rural Lawyer Shortage, and Implications for Civil and Criminal Legal Systems*, in *RESEARCH METHODS FOR RURAL CRIMINOLOGISTS* 67, 70 (Ralph A. Weisheit, Jessica Rene Peterson & Artur Pytlarz eds., 2022).

142. N. Douthit, S. Kiv, T. Dwolatzky & S. Biswas, *Exposing Some Important Barriers to Health Care Access in the Rural USA*, 129 *PUB. HEALTH* 611, 614–16 (2015).

143. Pruitt et al., *Legal Deserts*, *supra* note 11, at 22.

144. Recent research suggests that another challenge in increasing rural residents' access to counsel may be cultural. See Michele Statz, Hon. Robert Friday & Jon Bredeson, “*They Had Access, but They Didn't Get Justice*”: *Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 *GEO. J. POVERTY L. & POL'Y* 321, 354 (2021) (quoting a Minnesota Supreme Court justice as saying that rural residents “only want to ask individuals for help (if they have to) from someone they know and trust”). More research is needed to better understand whether and to what extent varying norms about help-seeking behavior and attitudes toward the legal system and legal actors shape access-to-justice challenges in rural areas.

Therefore, innovations in immigrant advocacy models developed to serve the detained immigrant population might offer a useful template for addressing the representation gap among immigrant respondents residing in small towns and rural areas.

To illustrate our point, we focus on one such model called “big immigration law,” which was developed to assist immigrant detainees.<sup>145</sup> Stephen Manning and Juliet Stumpf explain that this model arose to counter the mass detention of female-headed families fleeing Central America.<sup>146</sup> The main attributes of the big immigration law model are “massiveness” and “collaboration.”<sup>147</sup> Manning and Stumpf explain the massiveness feature in the following way: “Traditional immigration law representation puts one client matter into the hands of a lawyer (or lawyers) and conceives of the representation as a single flow of activity—the act of representation.”<sup>148</sup> By contrast, big immigration law takes that single flow of lawyer activity and breaks it down into small, meaningful, constituent parts that can be distributed to many different advocates; these constituent parts can then be recombined later.<sup>149</sup> On the collaboration front, the big immigration law model operates on a web-based client management system, a shared document database, and communication networks, which allow volunteers from anywhere in the country to work as a team remotely.<sup>150</sup> Manning and Stumpf describe how this model worked to serve families detained at a facility in Artesia, New Mexico:

In Artesia, attorneys, law students, and lay advocates converged at the detention center for a few days to two weeks. Working as a team at the site, they ascertained how far in the protocol the client had advanced and picked up the case tasks where the last on-the-ground team had left off. Like a large law firm, the attorneys collectively served the client, such that dozens of lawyers may have brought a case from the initial interview to its conclusion.<sup>151</sup>

In brief, the big immigration law model’s key innovation is bringing coordinated information, collaborative strategy, and physical presence of service providers to a population experiencing challenges associated with geographical isolation. Our argument is not that legal advocacy models tailored to serve the immigrant detainee population can be imported whole cloth to assist non-detained immigrant respondents living in geographical isolation. However,

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145. See Stephen Manning & Juliet Stumpf, *Big Immigration Law*, 52 U.C. DAVIS L. REV. 407, 420 (2018).

146. *Id.* at 412.

147. *Id.* at 421.

148. *Id.* at 424.

149. *Id.* at 421.

150. *Id.* at 427–28.

151. *Id.* at 429.

adapting these and other evolving innovations in the delivery of legal services for detained immigrants to serve non-detained immigrant respondents in small towns and rural areas promise to generate new and creative opportunities to address the representation crisis.

### B. *Linguistic Isolation*

Next, we turn to our finding pertaining to the positive relationship between English proficiency and the likelihood of obtaining legal representation. As a preliminary matter, it is helpful to consider Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, which requires all agencies that receive federal funding to “implement a system by which [persons with limited English proficiency] can meaningfully access [the agencies’] services.”<sup>152</sup> A failure to comply with the Order could violate Title VI of the Civil Rights Act of 1964 for discriminating on the basis of national origin.<sup>153</sup> Implementation of this Executive Order across courts in the United States, especially in immigration courts, has been fraught with numerous problems, ranging from conspicuous gaps in language services to inadequate or incompetent interpretation.<sup>154</sup> In addition, the challenges of providing meaningful language access in immigration courts have become even more difficult in recent years due to a rise in the number of immigrant respondents who speak only indigenous languages.<sup>155</sup> For example, in fiscal year 2018, the Guatemalan Mayan languages of Mam and Quiché (or K’iche’) were the ninth and eleventh most commonly used languages by immigrant respondents in immigration courts.<sup>156</sup>

Our focus on language as a barrier to obtaining legal representation is related to, but distinct from, issues of language access in immigration courts. It should come as no surprise that legal service providers have long considered language translation and interpreter support as critical elements of successfully

152. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

153. See Destinee Easley, *Can You Hear Me Now: Due Process and Language Barriers to Justice*, 5 J. GLOB. JUST. & PUB. POL’Y 137, 147 (2019).

154. See, e.g., *id.* at 137; Grace Benton, “*Speak English*”: *Language Access and Due Process in Asylum Proceedings*, 34 GEO. IMMIGR. L.J. 453, 463–64 (2020); Maya P. Barak, *Can You Hear Me Now? Attorney Perceptions of Interpretation, Technology, and Power in Immigration Court*, 9 J. MIGRATION & HUM. SEC. 207, 209–10 (2021).

155. See Cindy Carcamo, *Ancient Mayan Languages Are Creating Problems for Today’s Immigration Courts*, L.A. TIMES (Aug. 9, 2016), <https://www.latimes.com/local/california/la-me-mayan-indigenous-languages-20160725-snap-story.html> [<https://perma.cc/HPA2-SV8H> (dark archive)]; Rachel Nolan, *A Translation Crisis at the Border*, NEW YORKER (Dec. 30, 2019), <https://www.newyorker.com/magazine/2020/01/06/a-translation-crisis-at-the-border> [<https://perma.cc/7K9X-E5C8> (dark archive)]; Blake Gentry, *O’odham Niok? In Indigenous Languages, U.S. “Jurisprudence” Means Nothing*, 37 CHICANX-LATINX L. REV. 29, 54–56 (2020).

156. Obinna, *supra* note 97, at 4.

representing non-English speaking clients.<sup>157</sup> Yet, there is a dearth of empirical research on how immigrant respondents are currently attempting to overcome language barriers in accessing counsel, which strategies are effective, and more generally, what types of policies can best ameliorate their language barriers in accessing counsel.<sup>158</sup> By contrast, there is a voluminous and growing body of empirical research that documents how language barriers can have a major adverse impact on healthcare access and health outcomes.<sup>159</sup> This body of research also offers evaluations of various programs designed to address language barriers in healthcare (including randomized controlled intervention trials),<sup>160</sup> which has promoted data-driven innovations in the health field.

The above discussion highlights an urgent need to explore a variety of scalable, coordinated, and creative intervention methods that can address the language barriers that immigrant respondents face in obtaining legal representation. For example, investing in machine translation (“MT”) programs, such as Google Translate, to improve the accuracy and diversity of language offerings (particularly languages for which there is an acute shortage of human interpreters) might yield substantial long-term payoffs. Existing research on the use of MT programs among immigrants document the benefits of such programs, but they also underscore the need for significant

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157. See, e.g., NESSEL & ANELLO, *supra* note 8, at 25 (“When asked about the uses to which [nonprofit legal service organizations] would put additional funding, the organizations universally preferred adding more full-time staff attorneys, followed by adding more part-time attorneys or other experienced staff. The next most common goal was adding language translation and interpreter support.”).

158. Obinna, *supra* note 97, at 12 (“[T]he inability to navigate the immigration process because of LEP is a severe and pervasive problem of which there is a considerable lack of data and research.”).

159. See, e.g., Caraway L. Timmins, *The Impact of Language Barriers on the Health Care of Latinos in the United States: A Review of the Literature and Guidelines for Practice*, 47 J. MIDWIFERY & WOMEN’S HEALTH 80 *passim* (2002); Glen Flores, *The Impact of Medical Interpreter Services on the Quality of Health Care: A Systematic Review*, 62 MED. CARE RSCH. & REV. 255 *passim* (2005); Sachiko Terui, *Conceptualizing the Pathways and Processes Between Language Barriers and Health Disparities: Review, Synthesis, and Extension*, 19 J. IMMIGRANT & MINORITY HEALTH 215 *passim* (2017).

160. See, e.g., Jennifer B. Hunter, Jill Guernsey de Zapien, Mary Papenfuss, Maria Lourdes Fernandez, Joel Meister & Anna R. Giuliano, *The Impact of a Promotora on Increasing Routine Chronic Disease Prevention Among Women Aged 40 and Older at the U.S.-Mexico Border*, 31 HEALTH EDUC. & BEHAV. 18S *passim* (2004) (presenting the results of a randomized controlled intervention trial on the effectiveness of community health workers); M. Barton Laws, Rachel Heckscher, Sandra J. Mayo, Wenjun Li & Ira B. Wilson, *A New Method for Evaluating the Quality of Medical Interpretation*, 42 MED. CARE 71, 71 (2004) (offering “a method to evaluate the quality of medical interpretation in a pediatric outpatient setting”); Maria R. Moreno, Regina Otero-Sabogal & Jeffrey Newman, *Assessing Dual-Role Staff-Interpreter Linguistic Competency in an Integrated Healthcare System*, 22 J. GEN. INTERNAL MED. 331, 331 (2007) (assessing “dual-role staff interpreter linguistic competence in an integrated health care system”); Hilal Al Shamsi, Abdullah G. Almutairi, Sulaiman Al Mashrafi & Talib Al Kalbani, *Implications of Language Barriers for Healthcare: A Systematic Review*, 35 OMAN MED. J. e122 *passim* (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7201401/pdf/OMJ-35-02-1900033.pdf> [<https://perma.cc/U2P7-ATGY>] (providing a meta-analysis of studies on language barriers in healthcare and intervention strategies).

improvements.<sup>161</sup> For example, in a recent study of Middle Eastern refugee families' use of smartphones to overcome language barriers, Katherine McCaffrey and Maisa Taha observe: "For our participants, figurative or poetic idioms were rendered literally, and a typo could derail a translation altogether. Distinctions between vernacular and formal varieties of Arabic created particular challenges."<sup>162</sup>

A related strategy that warrants careful consideration is improving the functionality of specialized mobile applications that focus on context-driven language translation. For example, Medibabble Translator is a free application for mobile devices that provides medical translation for patients.<sup>163</sup> Likewise, Tarjimly is a translator application that has been developed to assist non-English speaking refugees communicate with humanitarian organizations in real-time with crowdsourced translators.<sup>164</sup> However, the application is currently of relatively limited scope, as highlighted in this description of the application: "The idea isn't to guide people through major processes like immigration—dedicated interpreters are still needed for long interviews, technical language and so on—but to handle time-sensitive matters like distribution of food and water or explaining an event or injury."<sup>165</sup>

Another possible intervention approach that warrants investigation is the enactment of laws that mandate all legal service providers to offer language services at no cost to limited-English immigrant respondents. Such laws would be analogous to certain state medical interpreter laws that require both private and public health service providers to offer language services to limited-English patients.<sup>166</sup> Yet another possible intervention strategy that deserves careful consideration is the development of "community legal worker" programs

161. See Lucas Nunes Vieira, Minako O'Hagan & Carol O'Sullivan, *Understanding the Societal Impacts of Machine Translation: A Critical Review of the Literature on Medical and Legal Use Cases*, 24 INFO. COMMUN. & SOC'Y 1515, 1515 (2021) (concluding in a study of the use of machine translation (MT) programs in healthcare and law that "MT technology can in its current state exacerbate social inequalities and put certain communities of users at greater risk" (emphasis added)).

162. Katherine McCaffrey & Maisa Taha, *Rethinking the Digital Divide: Smartphones as Translanguaging Tools Among Middle Eastern Refugees in New Jersey*, 43 ANNALS ANTHROPOLOGICAL PRAC. 26, 31–32 (2019).

163. Alvi A. Rahman, *Rising Up to the Challenge: Strategies To Improve Health Care Delivery for Resettled Syrian Refugees in Canada*, 94 U. TORONTO MED. J. 42, 43 (2016).

164. Devin Coldeway, *Bilingual? Tarjimly Lets You Help a Refugee or Aid Worker Right Now*, TECHCRUNCH (Feb. 13, 2018, 1:04 PM), <https://techcrunch.com/2018/02/13/bilingual-tarjimly-lets-you-help-a-refugee-or-aid-worker-right-now/> [<https://perma.cc/J2VS-MLQD>].

165. *Id.*

166. See Mara K. Youdelman, *The Medical Tongue: U.S. Laws and Policies on Language Access*, 27 HEALTH AFFS. 424, 426–29 (2008). Whether, to what extent, and which segment of legal service providers should be required to provide language access is an important question that deserves careful examination.

modeled after community health worker programs in the healthcare sector.<sup>167</sup> Community health workers or *promotoras de salud* (commonly referred to as *promotoras*) are trusted, bilingual lay community members who are trained to provide health education and outreach services within their own communities. For example, they facilitate access to healthcare for patients with limited English proficiency by helping them schedule health screenings and medical appointments.<sup>168</sup> Likewise, bilingual community legal workers can be trained to perform similar functions to promote access to counsel among immigrant respondents.<sup>169</sup>

Undoubtedly, there are many other potentially useful strategies that should be investigated for feasibility and scalability if we want to ameliorate severe language barriers that prevent access to counsel for many immigrant respondents. No single intervention strategy will be a panacea given the breadth and complexity of the problem. It is also important to note that our aim in highlighting the specific programs and intervention strategies in our discussion has not been to advocate for their wholesale adoption. Instead, the goal of our discussion has been to illustrate the range and diversity of possibilities that merit exploration.

### C. *Social Isolation*

Finally, we consider our finding relating to the significant and positive relationship between the size of the immigrant respondents' conational social networks and the likelihood of obtaining legal representation. This finding highlights a central, yet largely overlooked, dimension of the representation crisis: the key role that social networks play in facilitating the search for, and the retention of, legal service providers. As Mark Davis has observed, physical proximity to lawyers or law firms does not ensure that nearby residents will use

167. See DeAnne K. Hilfinger Messias, Deborah Parra-Medina, Patricia A. Sharpe, Laura Treviño, Alexis M. Koskan & Daisy Morales-Campos, *Promotoras de Salud: Roles, Responsibilities, and Contributions in a Multi-site Community-Based Randomized Controlled Trial*, 11 HISP. HEALTH CARE INT'L 62 *passim* (2013); Rebecca A. Matthew, Pamela Orpinas, Alejandra Calva, J. Maria Bermudez & Carolina Darbisi, Lazos Hispanos: *Promising Strategies and Lessons Learned in the Development of a Multisystem, Community-Based Promotoras Program*, 41 J. PRIMARY PREVENTION 229 *passim* (2020).

168. Messias et al., *supra* note 167, at 63.

169. For example, in Portland, Oregon, a legal defense program called Equity Corps of Oregon was launched in October 2018 to provide legal services to immigrants in removal proceedings by using "community navigators." See TESS HELLGREN, KELSEY PROVO, RAMON VALDEZ, JORDAN CUNNINGS & STEPHEN W. MANNING, *DEFENDING EVERYONE: HOW INNOVATIVE UNIVERSAL REPRESENTATION INVESTS IN OUR COLLECTIVE PROSPERITY* 1, 6 (2020), <https://innovationlawlab.org/media/Defending-Everyone-1.pdf> [<https://perma.cc/2SB3-BF9V>]. These navigators are nonlawyers embedded in social service agencies, churches, and community organizations who have been trained to provide immigrants with referrals, guidance, and education about various resources, including deportation defense. See *id.* One important question that arises with such programs is how to prevent the unauthorized practice of immigration law by nonlawyer service providers.

the legal services they offer.<sup>170</sup> Instead, “the best predictor of who is served by the legal community—and how—is whether that person or the social/economic strata they identify with have been served before.”<sup>171</sup>

Research on access to healthcare among immigrant communities provides useful insights for thinking about *how* conational social networks might facilitate access to counsel. For instance, Kathryn Pitkin Derose, in her study of Latina immigrant women in Los Angeles, describes a powerful “network of care,” which includes family members, friends, and neighbors, that allowed Latina women to overcome barriers to obtaining healthcare. The following description of how this network of care operated is illustrative:

This woman helped María first access the system, by showing them *where* to go (the county hospital emergency room) and *how* to get there (on public transportation). Then, she accompanied them through the system, staying with them “until the sun was going down” and she even provided nourishment. She did not think only of their immediate needs, however; she also returned on another day to show María where to take her mother for her appointment and to introduce her to key personnel (presumably bilingual) who provided future assistance.<sup>172</sup>

Likewise, for immigrants facing removal, conational social networks in immigrant respondents’ communities can function as central conduits of valuable information about legal service providers. Such information likely includes knowledge about what local legal service providers do, what their fees are, why they are needed and under what conditions, where and how to contact them, as well as how to retain them and manage the relationship throughout the removal process. For some immigrant groups, conational social networks may also play an important role in providing material resources or financial assistance that assist in obtaining legal representation.

The foregoing discussion suggests that, from both research and policy standpoints, we need a deeper understanding of how and what kinds of advice and knowledge about legal service providers are transmitted through ethnic networks, as well as how these social networks might facilitate the flow of material and financial support to immigrant respondents seeking representation. Comprehensive data of this sort can directly inform efforts to increase immigrant respondents’ access to counsel. For example, to ensure that immigrant respondents who lack conational social networks are not left in the dark, data collected on such social networks can be used to create a comprehensive and centralized educational program on legal representation that

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170. Davis, *supra* note 15, at 210.

171. *Id.*

172. Kathryn Pitkin Derose, *Networks of Care: How Latina Immigrants Find Their Way to and Through a County Hospital*, 2 J. IMMIGRANT HEALTH 79, 83–84 (2000).



is easily accessible to all immigrant respondents.<sup>173</sup> The program would disseminate a variety of essential information about legal representation, including: why legal representation may be important in removal proceedings and under what circumstances; what types of lawyers, nonlawyer practitioners, and legal service organizations exist in the United States; the range of services that they typically render; how different types of fee arrangements work; and practical strategies for finding legal representation and maximizing consultation sessions with legal service providers.

Of note, the federal government already has experience and basic institutional infrastructure that can be leveraged to develop a comprehensive program of the sort described above on legal representation. The Legal Orientation Program (“LOP”) is intended to educate detained immigrants about what immigration courts do and to provide an overview of different types of relief from removal that detained immigrants might be able to seek.<sup>174</sup> The Immigration Court Helpdesk Program (“ICH”), established in five immigration courts, has the same goal as LOP, except that ICH is aimed at providing similar information to non-detained immigrants.<sup>175</sup> These existing programs, however, are designed to impart only basic substantive knowledge about the rules pertaining to the removal process.<sup>176</sup> What is needed is a more comprehensive educational program that unpacks for the immigrants the “what,” the “why,” and the “how,” of legal representation.

#### CONCLUSION

Existing research on the unmet legal needs of immigrants navigating the immigration enforcement and adjudication system has focused on the shortage of free or low-cost counsel for immigrants. This study empirically confirms that the supply of immigration lawyers in a given immigrant’s community is a

173. Currently, the EOIR offers immigrant respondents only extremely abbreviated information about legal representation on its website. *See, e.g., Immigration Court Online Resource*, EXEC. OFF. IMMIGR. REV., <https://icor.eoir.justice.gov/en/> [<https://perma.cc/6L7C-CZT9>] (choose “Learn about Legal Representation”); EXEC. OFF. FOR IMMIGR. REV., DO YOU NEED A LAWYER OR ACCREDITED REPRESENTATIVE? INFORMATION ON HOW TO FIND LEGAL REPRESENTATION IN IMMIGRATION COURT (2022), <https://www.justice.gov/eoir/page/file/1480736/download> [<https://perma.cc/APF8-PFLL>]. While these brief online resources may be useful for limited purposes, they are inadequate to meet the immigrant respondents’ holistic informational needs.

174. *Executive Office for Immigration Review: Legal Orientation Program*, U.S. DEP’T JUST. (Jan. 6, 2023), <https://www.justice.gov/eoir/legal-orientation-program> [<https://perma.cc/PY35-7J86>].

175. *Executive Office for Immigration Review: Immigration Court Helpdesk*, U.S. DEP’T JUST. (Aug. 10, 2022), <https://www.justice.gov/eoir/reference-materials/general/chapter-2/1> [<https://perma.cc/6RXU-Y3KE>]. Between January 2016 and June 2017, the U.S. government also provided legal orientation to families seeking asylum at the U.S. border through its Family Case Management Program. *See WOMEN’S REFUGEE COMM’N, THE FAMILY CASE MANAGEMENT PROGRAM 1* (2019), <https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/The-Family-Case-Management-Program.pdf> [<https://perma.cc/T4B7-XZXR>].

176. *See* Brunsink & Powers, *supra* note 22, at 849–51.

significant predictor of whether they will obtain legal representation. This is an important finding that supports the continuing need to address the shortage of legal service providers in this area of law. However, the current study goes beyond this supply-side dimension of the representation crisis to promote a more comprehensive and more nuanced understanding of other complex structural and social barriers that may prevent immigrant respondents from obtaining representation. Our study findings should serve as an urgent call to action for scholars, advocates, and policymakers to explore a broader and more expansive approach to conceptualizing and addressing the representation crisis in immigrant communities.

#### METHODS APPENDIX

##### A. *AILA Data Structure*

Each member in the AILA data has one or more membership periods. A membership period begins when the member creates or renews their membership. When the member creates or renews their membership, they also have the opportunity to update their personal data. The personal data for a given member, therefore, may vary across membership periods. To properly account for any changes in a member's personal data that may occur within a given calendar year, each membership period is assigned a weight for that year. Each member also has a total weight for each year, which reflects the proportion of the year that their membership was active.

We apply the following rules to calculate the weights assigned to each membership period and member for each calendar year: A member that has an action type of either (1) *Membership Created*, (2) *Membership Created Online*, (3) *Sent Membership Packet*, (4) *Membership Renewed Online*, or (5) *Membership Renewed Wizard*, is considered to have created/renewed their membership on the date that appears under the "LastUpdate" variable associated with that membership action. Each created or renewed action begins a one-year membership period. If a member has overlapping membership periods, the earlier membership period is adjusted to end on the date that the newer membership period begins. The period weight is equal to the number of days in a given calendar year that are within the membership period divided by the total number of days in the calendar year. The member weight is the sum of the member's period weights for that calendar year.

##### B. *Coding of Variables*

###### *Represented*

This variable, which we use to indicate whether a respondent had representation in their removal proceeding, is derived from the "E28\_Date"

variable included in the Respondent Data. This variable is coded based on the date that Form EOIR-28 was filed. A completed Form E-28 functions as a notice of entry of appearance as an attorney or a representative before the immigration court. We interpret the presence of such a date as indicating that the immigrant respondent had representation.

#### *Conational Population*

This variable is derived from Census Table B05006, which provides a breakdown of the foreign-born population of a county. We matched the immigrant respondent's nationality with the countries listed in the Census table and set the immigrant respondent's conational population to be the number of foreign-born individuals in their county that were from the same country. For immigrant respondents whose countries do not appear in the Census table, we dropped them from our analysis.

#### *Attorney-to-Respondent Ratio*

To match immigrant respondents with attorneys, we first constructed all pairwise combinations of immigrant-respondent ZCTAs with attorney ZCTAs. For each pairing, we used the *geodist*<sup>177</sup> package to calculate the distance from the centroid of the immigrant-respondent ZCTA to the centroid of the attorney ZCTA. Of these respondent-attorney pairs, we retained only those that were within 200 miles of each other. Next, we constructed service areas of four different radii: 10, 50, 100, and 200 miles. Any respondent ZCTA within range of a given attorney ZCTA was considered to be part of that attorney ZCTA's service area. This allowed us to calculate the total number of respondents that were within range of each attorney ZCTA, and thereby find the attorney-to-respondent ratio for each attorney ZCTA. For example, an attorney ZCTA that had ten attorneys and was within a fifty-mile radius of a respondent ZCTA containing a total of 100 respondents would have an attorney-to-respondent ratio of 0.1.

We then used the attorney-to-respondent ratios for each attorney ZCTA to calculate the number of attorneys available to individuals within each respondent ZCTA. Consider a ZCTA that had fifty respondents within a fifty-mile radius of two attorney ZCTAs. Suppose that the first attorney ZCTA had an attorney-to-respondent ratio of 0.1, and the second attorney ZCTA had an attorney-to-respondent ratio of 0.2. The first attorney ZCTA would allocate five attorneys ( $0.1 \times 50$ ) to serve the respondent ZCTA, and the second attorney ZCTA would allocate ten attorneys ( $0.2 \times 50$ ). This results in the respondent

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177. Robert Picard, *GEODIST: Stata Module To Compute Geographical Distances*, ECONPAPERS (Feb. 1, 2023), <https://econpapers.repec.org/software/bocbocode/s457147.htm> [<https://perma.cc/832S-WPB7>].

ZCTA having access to fifteen “scaled” attorneys, yielding an attorney-to-respondent ratio of 0.3 (15 / 50).

*Concentrated Disadvantage Index*

We constructed this index for each immigrant-respondent ZCTA by using factor analysis with the following ten variables as inputs: (1) *Percent Individuals Below the Poverty Line*, (2) *Percent Households Receiving Public Assistance*, (3) *Percent Female-Headed Families*, (4) *Percent Unemployed*, (5) *Percent Less Than Age 18*, (6) *Percent Black*, (7) *Percent Latino*, (8) *Percent Foreign-Born*, (9) *Percent Less Than High School Education*, and (10) *Percent Owner-Occupied Home*.

We retained two factors with eigenvalues greater than one (2.49 and 1.02). The third factor had an eigenvalue of 0.30, which is both below the threshold and also a significant drop-off (scree method). We rotated the two factors using the oblique quartimin method. The first factor represents concentrated disadvantage, and the second factor represents the concentration of immigrants in a community. We use only the first factor in our analysis.

Appendix Table A. Description of Variables Used in the Analyses

Variable	Description	Coding
<b>Outcome</b>		
Represented	Whether a removal proceeding had legal representation as reported in the Respondent Data (proceedings level).	1=Yes; 0=No
<b>Predictors</b>		
Urbanicity	Urban-Rural classification based on the U.S. CDC designation (county level).	1=Large Metro-Urban; 2=Large Metro-Suburban; 3=Small & Mid Metro; 4=Rural
English Speaking	Whether the respondent's primary language as reported in the Respondent Data is English (proceedings level).	1=Yes; 0=No
Conational Population	Number of foreign-born individuals residing in the same county as the respondent who share the same country of birth, as reported in the 2019 ACS (county level).	Count
<b>Control Variables</b>		
Attorney-to-Respondent Ratio	Ratio of attorneys to respondents within 50-mile radius (ZCTA level).	Ratio
Concentrated Disadvantage Index	Factor score capturing the socioeconomic disadvantage of the respondent's community as reported in the 2019 ACS (ZCTA level). The index combines the variables shown below.	Index Score
Percent Individuals Below the Poverty Line	Percent of individuals below the poverty line in respondents' ZCTA.	Percent
Percent Households	Percent of households receiving public assistance in respondents' ZCTA.	Percent

Receiving Public Assistance		
Percent Female-Headed Families	Percent of female-headed households in respondents' ZCTA.	Percent
Percent Unemployed	Percent of individuals unemployed in respondents' ZCTA.	Percent
Percent Less Than Age 18	Percent of individuals less than age 18 in respondents' ZCTA.	Percent
Percent Black	Percent of Black individuals in respondents' ZCTA.	Percent
Percent Latino	Percent of Latino individuals in respondents' ZCTA.	Percent
Percent Foreign-Born	Percent of foreign-born individuals in respondents' ZCTA.	Percent
Percent Less Than High School Education	Percent of individuals with less than high school education in respondents' ZCTA.	Percent
Percent Owner-Occupied Home	Percent of owner-occupied homes in respondents' ZCTA.	Percent
Nationality	The respondent's country of origin (proceedings level).	1=Mexico; 2=El Salvador; 3=Guatemala; 4=Honduras; 5=Other