

New York program gets public defenders for immigrants

The pilot initiative provides free legal counsel to some low-income people facing deportation. Immigrant rights advocates elsewhere hope to start their own programs.

By Cindy Chang

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NEW YORK — Anderson Cadet arrived at the Varick Street courthouse in an orange jumpsuit, shackled at the wrists, prepared to fight his deportation without an attorney.

In immigration court, there is generally no right to free legal counsel. Many immigrants represent themselves. But on this cold February morning, Cadet was greeted by a public defender who took on his case for free.

The Haitian immigrant is a client in a yearlong pilot program, believed to be the first of its kind, that provides free legal counsel to low-income people facing deportation.

With \$500,000 from the [New York City Council](#), about 20% of immigrants in nearby detention centers this year will receive a public defender. Proponents are looking for \$7.4 million in city and state funding to expand the program to all of the 900 or so city residents who end up in immigration detention each year.

Immigrant rights advocates in cities across the country, including Los Angeles, are hoping to start their own public defender programs.

"Day after day, people are getting deported who shouldn't be deported," said Peter Markowitz, a professor at the Benjamin N. Cardozo School of Law in New York and a cofounder of the legal counsel program, called the New York Immigrant Family Unity Project.

Cadet's initial hearing began a few hours after he met his attorney, Brittany Brown of [Brooklyn Defender Services](#).

Brown argued that Cadet should be allowed to keep his green card because his convictions, for petty theft and turnstile jumping, were not "crimes involving moral turpitude." A government attorney countered that the convictions made Cadet deportable. Judge Thomas Mulligan cited a case from 1945, then asked Brown to submit a written brief.

Since the pilot program began in November, hearings proceed more efficiently because attorneys have already explained the basics to their clients, its proponents say. Some, like Cadet, have

possible defenses that they are unlikely to have unearthed on their own. Others are advised by their new lawyers that deportation is unavoidable.

"The thought that someone could go up against a trained government attorney, argue a complicated area of law without legal training and competently represent themselves is really a fiction. It will rarely happen," said Oren Root, director of the Center on Immigration and Justice at the Vera Institute of Justice, which administers the program.

Prior to the pilot program, more than two-thirds of New Yorkers in immigration detention centers represented themselves, with a success rate of 3%, compared with 18% for detainees with attorneys, according to a study by backers of the program.

In Los Angeles, many immigrants also appear without attorneys, though exact figures are not available. On a recent morning at the federal building on Los Angeles Street, five of the 13 detainees on Judge Lorraine Muñoz's docket had private attorneys. The others were navigating the byzantine immigration system alone.

"I have seen plenty of people who had defenses of various kinds and clearly did not understand that that was true," said Ahilan Arulanantham, deputy legal director at the [ACLU](#) of Southern California, who recently won a case requiring the government to provide attorneys for mentally disabled immigrants.

By allowing breadwinners to stay in the country and support their families, and by reducing the time that clients spend in detention, the New York program could save millions of dollars, more than paying for itself, its backers have calculated.

But Mark Krikorian, executive director of the Center for Immigration Studies, said the program was a misuse of public money.

"The question is, should taxpayers be funding the defense of people, many of whom shouldn't even be in this country?" said Krikorian, who advocates for a more restrictive immigration system. "The answer is no. It's absurd on its face."

As a federal appeals court judge, Robert Katzmann saw case after case in which immigrants missed legal arguments that could have saved them from deportation.

Katzmann convened a study group, which produced the 56-page report detailing the much lower odds for immigrants without legal counsel. Advocates used the data to persuade City Council members to fund New York's pilot program.

"I had this view that justice should not depend on the income level of the immigrant, and that if we could improve the lawyering, we would have better confidence that justice was being done thoroughly and efficiently," said Katzmann, chief judge for the U.S. 2nd Circuit Court of Appeals.

In Los Angeles, the public interest law firm Public Counsel represents several hundred immigrants each year, mostly using pro bono attorneys from private firms. Catholic Charities' Esperanza Immigrant Rights Project also represents people facing deportation. But many still go without, especially those held in detention centers in distant locations.

"It's staggering that we don't have that, considering our needs here are as great or greater than New York's," said Judy London, head of Public Counsel's Immigrants' Rights Project.

"Hopefully, this will put the fire under people's feet and be a real motivator for government and the philanthropic community to fashion something like this."

Facing Judge Muñoz without an attorney, Jose Juan Rodriguez Garcia said in fluent English that he was "not in a right state of mind" when he resisted arrest.

A government attorney argued that the crime was an aggravated felony, which along with a [methamphetamine](#) conviction would strip Rodriguez of his green card and force him to return to Mexico.

When Muñoz asked for a rebuttal, Rodriguez responded, "No, that's correct," then accepted a deportation order, reserving the right to appeal.

"I'll continue to fight to stay," Rodriguez said. He added that he had been the victim of a crime, which could potentially qualify him for a U visa.

Muñoz told him he would have to apply for the visa with U.S. Citizenship and Immigration Services.

"I don't know how to do it," she said.

<http://www.latimes.com/nation/la-na-ff-immigrant-legal-counsel-20140310,0,5440705.story#ixzz2vatfmUEi>