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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FEB 26 2002

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DEPUTY
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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE EASTERN DISTRICT OF WASHINGTON

17 MARCOS GONZALEZ MACHADO, by
18 and through DAVID GROESBECK, the
19 Proposed Guardian ad Litem, and all others
20 similarly situated,

21 Plaintiffs,

22 vs.

24 JOHN ASHCROFT, Attorney General;
25 ROBERT COLEMAN, District Director,
26 Seattle INS District Office; and
27 IMMIGRATION AND
28 NATURALIZATION SERVICE,

Defendants.

No. CS-02-0066-FVS

MEMORANDUM OF AUTHORITIES
IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

CLASS ACTION

1 Plaintiff Marcos Gonzalez Machado is the named representative of a putative
2 class of indigent children confined by the Immigration and Naturalization Service
3 (INS) in secure detention or shelter care facilities who lack court-appointed counsel to
4 represent them in INS removal (deportation) proceedings. Marcos, who is fourteen
5 years old, is currently incarcerated in Martin Hall, a secure juvenile detention facility
6 in Eastern Washington. Because Marcos was forced to represent himself through the
7 INS removal process and did not understand his legal rights and options, the
8 Immigration Judge issued an order "granting" voluntarily departure from the United
9 States. Marcos is scheduled to be immediately removed to Mexico. (Plaintiff's
10 counsel has been told by officials at the Mexican Consulate Marcos is scheduled to be
11 removed by March 5, 2002).

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17 The Defendants' refusal to appoint counsel to represent Marcos violates the
18 Due Process Clause of the Fifth Amendment to the United States Constitution.
19 Because Marcos will suffer irreparable harm if he is deported to Mexico or required to
20 represent himself at any further removal proceedings, he seeks a temporary restraining
21 order and preliminary injunctive relief pursuant to FED. R. CIV. P. 65(a) to require the
22 Defendants to cease all deportation actions and to immediately appoint him counsel.
23 The Plaintiff also requests an expedited hearing on this matter and asks that the Court
24 waive the requirement that a bond be posted.
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3 **I. FACTUAL BACKGROUND**

4 Marcos was born on May 8, 1987. His father died when he was young, and his
5 mother abandoned him shortly thereafter. He was raised by his grandfather, who is
6 elderly and ill. Prior to his detention, Marcos was living in Seattle, Washington, with
7 his aunt and uncle. See Declaration of Marcos Gonzalez Machado dated February 25,
8 2002.
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11 In February 2002, Marcos was kidnapped at gunpoint. He went to a police
12 station in Seattle to report that he had been the victim of a crime. The police
13 department notified the INS and Marcos was placed in INS custody in Seattle,
14 Washington. Shortly thereafter, he was transferred to Martin Hall in Medical Lake,
15 Washington, where he remains today pending the outcome of his removal proceedings
16 and probable deportation. *Id.*
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19 Martin Hall is a secure juvenile detention facility used by several Washington
20 counties to incarcerate juvenile offenders. The INS also contracts with Martin Hall to
21 detain juveniles being held on immigration matters. At Martin Hall, Marcos and other
22 INS detainees are treated as prisoners, even though they have not been charged with
23 any criminal offense. Marcos and the other INS detainees are in daily contact with
24 juveniles who have committed violent offenses. Marcos is not at liberty to leave
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1 Martin Hall except for appearances before the Immigration Court. When transporting
2 Marcos to and from appearances before the Immigration Court, the INS uses physical
3 restraints, such as handcuffs and shackles. Because Marcos does not speak English,
4 and Martin Hall has very few staff members who speak Spanish, Marcos is unable to
5 adequately communicate with staff members employed by the INS. *Id.*
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8 Marcos is indigent and unable to afford counsel to represent him. Because
9 Marcos did not understand his legal rights or options and was unrepresented by
10 counsel during his removal proceedings, Marcos unwittingly signed an agreement to
11 voluntarily depart the United States. He is currently scheduled to be deported to
12 Mexico on or about February 27, 2002. If Marcos is removed to Mexico, he faces a
13 situation in which he is forced to live with an ill and elderly grandfather who is
14 incapable of taking care of him. If Marcos had an attorney to represent him, that
15 attorney could file a number of motions and claims (discussed in more detail below)
16 that would stop Marcos from being deported, release him from detention, and
17 potentially result in Marcos being permitted to remain in the United States and maybe
18 even become a United States citizen. Without the appointment of counsel, Marcos
19 will be on a plane within a week to an uncertain and potentially homeless future in
20 Mexico.
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1 **II. THE REQUIREMENTS FOR THE ISSUANCE OF**
2 **A PRELIMINARY INJUNCTION ARE SATISFIED**

3 Four prerequisites must be established for the issuance of a preliminary
4 injunction: (1) a substantial likelihood of success on the merits; (2) irreparable injury
5 in the absence of preliminary relief; (3) the threatened injury to the movant must
6 outweigh the harm the preliminary injunction would inflict on the non-movant; and
7 (4) the preliminary injunction will not disserve the public interest. *See Textile Unltd.,*
8 *Inc. v. A.BMH & Co., Inc.*, 240 F.3d 781, 786 (9th Cir. 2001). The Plaintiff satisfies
9 all four of these requirements.

10 **A. THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE PLAINTIFF**
11 **WILL PREVAIL ON THE MERITS OF HIS CLAIM.**

12 Marcos is likely to succeed on the merits of his claim that the Defendants'
13 failure to appoint counsel to represent him in his removal proceedings violates the
14 United States Constitution. The right to court-appointed counsel in non-criminal
15 cases is governed by the Fifth Amendment's Due Process Clause. *See Lassiter v.*
16 *Department of Social Services*, 452 U.S. 18, 26 (1981). The Supreme Court has
17 recognized that where, as here, a proceeding may result in the curtailment of a
18 juvenile's freedom, the Fifth Amendment requires the appointment of counsel. *See In*
19 *Re Gault*, 387 U.S. 1, 36 (1967).

20 In determining whether due process requires the appointment of counsel in non-
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1 criminal cases, the three elements propounded in *Matthews v. Eldridge*, 424 U.S. 319
2 (1976), are balanced against each other. *See Lassiter*, 452 U.S. at 27. These factors
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4 are:

5 First, the private interest that will be effected by the official action;
6 second, the risk of an erroneous deprivation of such interest through the
7 procedures used, and the probable value, if any, of additional or
8 substitute procedural safeguards; and finally, the Government's interest,
9 including the function involved and the fiscal and administrative
10 burdens that the additional or substitute procedural requirement would
entail.

11 *Matthews*, 424 U.S. at 335. All three of the *Matthews* factors weigh heavily in favor
12 of the appointment of counsel during all INS removal proceedings.

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14 **1. The Private Interests at Stake Are Significant.**

15 The first *Matthews* factor considers the private interest that will be effected by
16 the official action. Here, Marcos has two significant liberty interests at stake. First,
17 he has a significant liberty interest in remaining in the United States, rather than being
18 deported to Mexico where he faces harsh and possibly dangerous conditions --
19 including the possibility of becoming homeless. As the Supreme Court has
20 recognized, “[a] deportation hearing involves issues basic to human liberty and
21 happiness and, in the present upheavals in lands to which aliens may be returned,
22 perhaps to life itself.” *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50 (1950); *see also*
23 *Ardestani v. INS*, 502 U.S. 129, 138 (1991) (recognizing “the enormity of the interests
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1 at stake” in immigration proceedings); *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10
2 (1948) (internal citation omitted) (“Deportation is a drastic measure, and at times the
3 equivalent of banishment or exile. It is the forfeiture . . . of a residence in this
4 country. Such a forfeiture is a penalty.”).

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7 In addition to his significant interest in remaining in the United States rather
8 than being deported to an uncertain future in Mexico, Marcos has an interest in being
9 free from incarceration pending the outcome of his removal proceedings. Where the
10 outcome of a proceeding may result in the loss of physical liberty, there is a
11 presumption that the individual has the right to appointed counsel. *See Lassiter*, 452
12 U.S. at 27; *cf. Schall v. Martin*, 467 U.S. 253, 265 (1984) (citation omitted) (holding
13 that a juvenile’s constitutional interest in “freedom from institutional restraints, even
14 for [a] brief time . . . is undoubtedly substantial”).

15 16 17 18 **2. Without Counsel, the Risk of Erroneous Deprivation is High.**

19 The second *Matthews* factor requires consideration of the risk of erroneous
20 deprivation of the plaintiff’s interest in the absence of the requested procedural
21 safeguards and the probable value, if any, of those safeguards. *Matthews*, 424 U.S. at
22 335. Here, the risk of an erroneous outcome in Marcos’ removal proceedings in the
23 absence of appointed counsel is extremely high, given the incredible complexity of the
24 immigration process and the special vulnerabilities of children, particularly those with
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1 limited-English proficiency.

2 The complexity of immigration law alone warrants a rule requiring appointment
3 of counsel for Marcos. "The immigration laws have been termed second only to the
4 Internal Revenue Code in complexity. A lawyer is often the only person who could
5 thread the labyrinth." *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988).
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7 The Supreme Court has also recognized "the complexity of immigration procedure,
8 and the enormity of the interests at stake." *Ardestani v. INS*, 502 U.S. at 138.
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11 According to immigration attorney Daniel Hoyt Smith:

12 Through my experience in immigration law, I have gained personal
13 knowledge of the complexity of the Immigration and Naturalization Act
14 (INA), and the implementing regulations, manuals, policy memos,
15 cables to the field, instructions, and also the actual day-to-day practices
16 of the INS. I have seen numerous cases where persons were able to
17 obtain immigration benefits or relief from deportation, with the services
18 of an attorney, while similarly situated persons without representation
19 were denied relief and ordered deported. Without legal representation,
20 they had no meaningful opportunity to obtain the immigration benefits
21 or relief from deportation provided by congress in the immigration
22 laws, whose complexity has been compared to the labyrinth of King
23 Minos.
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25 *See* Declaration of Daniel Hoyt Smith in Support of Plaintiff's Motion for Temporary
26 Restraining Order and Preliminary Injunction dated February 26, 2002; *see also*
27 Declaration of Margaret G. Taylor in Support of Plaintiff's Motion for Temporary
28 Restraining Order and Preliminary Injunction dated February 26, 2002; Declaration of
Ann E. Benson in Support of Plaintiff's Motion for Temporary Restraining Order and

1 Preliminary Injunction dated February 26, 2002; Beth J. Werlin, *Renewing the Call:*
2 *Immigrants' Right to Appointed Counsel in Deportation Proceedings*, 20 BOSTON
3 COLLEGE THIRD WORLD LAW JOURNAL 393, 414-415 (2000). No child, much less a
4 child who has limited English skills, should be required to navigate one of our
5 nation's most complex statutory schemes on his or her own.
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8 The risk of an erroneous outcome in the absence of counsel is compounded by
9 the fact that removal proceedings are adversarial, with the INS represented at every
10 contested proceeding by a trained immigration trial attorney. *See* C.F.R. § 242.9(b).
11 It seems absurd, but the fact is that without an injunction requiring the appointment of
12 counsel to represent Marcos, a trained INS trial attorney who is an expert in
13 immigration law stands opposite in the courtroom from Marcos, a fourteen year-old
14 immigrant child with limited English skills, who knows nothing about immigration
15 law and is completely unable to assert any legitimate claims on his own behalf. It is
16 hard to imagine a system more likely to result in an erroneous outcome or more
17 patently unfair.
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22 In *In re Gault*, the Supreme Court recognized the particular importance of
23 providing counsel to children in legal proceedings:
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25 The juvenile needs the assistance of counsel to cope with problems of
26 law, to make skilled inquiry into the facts, to insist upon regularity of
27 the proceedings, and to ascertain whether he has a defense and to
28 prepare and submit it. The child "requires the guiding hand of counsel
at every step in the proceedings against him."

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2 387 U.S. at 36 (citation omitted). This recognition of the particular needs of children
3 in our justice system “abound in our law: in contracts, in torts, in criminal law and
4 procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold
5 office.” *Goss v. Lopez*, 419 U.S. 565, 591 (1975) (dissenting opinion). The
6 differentiation between children and adults derives from an understanding that the law
7 must take a protective attitude towards children in recognition of their “peculiar
8 vulnerabilities.” *See Bellotti v. Baird*, 443 U.S. 622, 634 (1979).

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12 In this case, we need not speculate about whether the risk of an erroneous
13 outcome might occur -- it already has. On February 15, 2002, at an INS removal
14 hearing in which Marcos was unrepresented, Marcos unknowingly consented to the
15 Immigration Judge’s grant of “voluntary departure. Inasmuch, Marcos unwittingly
16 agreed to voluntarily leave the United States and forgo all of his legal rights. In fact,
17 Marcos was unaware of the consequences of the removal hearing until he
18 subsequently talked with undersigned counsel on February 25, 2002. This case is the
19 perfect illustration of the enormous risk of an erroneous outcome when counsel is not
20 appointed to represent a child.

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24 In addition to the evaluation of the risk of an erroneous outcome, the second
25 *Mathews* prong also requires consideration of the probable value of the proposed
26 additional procedural safeguards. *Mathews*, 424 U.S. at 335. It is indisputable that
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1 the additional procedural safeguard of appointing counsel to represent Marcos would
2 reduce the likelihood that he would be erroneously deported. If Marcos were
3 appointed counsel, he would not be currently facing immediate deportation. His
4 attorney could, at the very least, (1) file a motion to suppress and a motion to
5 terminate the removal proceedings based upon the unlawful manner in which the INS
6 obtained the alleged evidence of alienage; (2) apply for relief pursuant to
7 INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (application for victims of violent
8 crimes); and (3) apply for relief pursuant to INA § 101(a)(27)(J), 8 U.S.C. §
9 1101(a)(27)(J) (special immigrant juvenile status). *See* Smith Declaration. All of these
10 avenues of relief could result in Marcos being removed from detention and permitted
11 to remain in the United States. In addition, Marcos' attorney could request bond or
12 release on recognizance pending the outcome of his proceedings and thereby obtain
13 his *immediate* freedom. *See id.*

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15 In fact, a study conducted by Georgetown University's Institute for the Study of
16 International Migration based on data obtained from the United States Department of
17 Justice revealed that immigrants who are represented by counsel in asylum
18 applications are four to six times more likely to succeed than *pro se* litigants. *See* Ex.
19 A (results of study conducted by Andrew Schoenholtz and Jonathan Jacobs). There is
20 simply no doubt that the appointment of counsel would dramatically reduce the
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1 chance that Marcos would be erroneously deported and dramatically increase the
2 chance that he would be set free.

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4 **3. Appointing Counsel is in the Government's Interest.**

5 The third *Matthews* factor requires a consideration of the government's interest,
6 including the fiscal and administrative burdens that the additional procedural
7 safeguards would entail. There is no doubt that requiring government-appointed
8 counsel in this case would impose some minimal monetary and administrative cost on
9 the government, but "it is hardly significant enough to overcome private interests as
10 important as those here." *Lassiter*, 452 U.S. at 18.

11 In sum, all of the *Matthews* factors weigh in favor of requiring the appointment
12 of counsel to Marcos. The Plaintiff is likely to succeed on the merits of his claim.

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17 **B. MARCOS WILL SUFFER IRREPARABLE INJURY.**

18 Given that Marcos is likely to be immediately deported if counsel is not
19 appointed, he is clearly being irreparably harmed by the Defendants' refusal to
20 appoint him counsel. Without counsel, Marcos is also likely to remain locked up in
21 detention for a significant period of time, perhaps months or years. The "unnecessary
22 deprivation of liberty clearly constitutes irreparable harm." *United States v. Bogle*,
23 855 F.2d 707, 710-11 (11th Cir. 1998).

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Marcos has no adequate remedy at law. An erroneous deportation could neither

1 be cured by a later suit (given that Marcos would no longer have access to the United
2 States' courts), nor compensated by monetary damages. *See Int'l Molders' and Allied*
3 *Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547, 551 (9th Cir. 1986).

5 **C. THE BALANCE OF HARDSHIPS FAVORS GRANTING THE**
6 **INJUNCTION.**

7 The significant and irreparable harm that Marcos will suffer if preliminary relief
8 is not granted outweighs any harm the Defendants might suffer from the imposition of
9 a preliminary injunction. As pointed out above, the cost to the INS of providing
10 counsel to Marcos in his removal proceedings is *de minimus*.

13 **D. THE PUBLIC INTEREST IS SERVED BY GRANTING THE**
14 **PRELIMINARY RELIEF.**

15 Vindication of fundamental constitutional rights, like the right to due process, is
16 in the public interest. *See Valley v. Rapides Parish School Bd.*, 118 F.3d 1047, 1056
17 (5th Cir. 1997) (injunction preventing government officials from taking
18 unconstitutional actions serves the public interest). There is a particularly strong
19 public interest here, where the liberty and freedom on a fourteen year-old child is at
20 stake.
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24 **III. THE REQUIREMENT THAT BOND BE POST**
25 **SHOULD BE WAIVED**

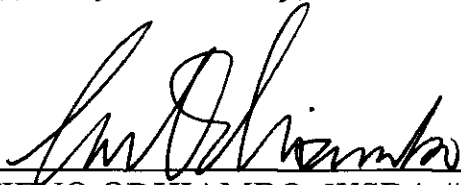
26 The Plaintiff respectfully requests that the Court waive the bond requirement
27 contained in FED. R. CIV. P. 65(c), given the strength of the case, the Plaintiff's
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1 indigency, and the strong public interest involved. *See Molton Co. v. Eagle-Picher*
2 *Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given
3 strength of case and “the strong public interest involved”); *Sluiter v. Blue Cross and*
4 *Blue Shield of Michigan*, 979 F. Supp. 1131, 1145 (E.D. Mich. 1997) (“Due to the
5 strong likelihood of plaintiffs’ success on the merits and their demonstrated financial
6 inability, the Court finds it would be improper to require any security in this matter.”).

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10 **IV. CONCLUSION**

11 Because the Plaintiff has satisfied all of the elements for the issuance of a
12 temporary restraining order and a preliminary injunction, the motion is due to be
13 granted.
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15 Respectfully submitted this 26th day of February, 2002.

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19 _____
20 ATIENO ODHIAMBO, WSBA #30280
21 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

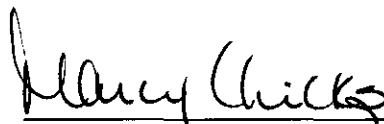
I certify under penalty of perjury under the laws of the State of Washington that a copy of the foregoing Memorandum of Authorities in Support of Motion for Temporary Restraining Order and Preliminary Injunction by regular mail, postage prepaid, properly addressed, this 20th day of February, 2002, to:

John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, DC 20530

Robert S. Coleman, Jr.
District Director
USINS Seattle District Office
815 Airport Way South, 3rd Floor
Seattle, WA 98134

U.S. Attorneys Office
920 West Riverside, 3rd Floor
Spokane, WA 99210

Signed this 20th day of February, 2002 at Spokane, Washington.



Marcy Chicks

EXHIBIT A

Asylum Representation
Dr. Andrew I. Schoenholtz
Georgetown University
May 2000

1. Representation matters in pursuing a claim in a complex legal system

Outcomes: 4-6 times more likely to be granted asylum when represented (Table 1)

No shows: *pro se* are 8 times more likely not to show at Immigration Court (no shows make up 30% of the *pro se* caseload in affirmative cases, over 6,000 in FY 1999) (Table 2)

2. Nationality matters as to who gets represented

Affirmative: 17% (Vietnam) to 98% (Yugoslavia); average 64% (Table 3)

Defensive: 57% (Vietnam) to 99% (Sri Lanka); average 82% (Table 3)

3. Locality matters as to who gets represented and just how important representation is to outcome

Representation: the range is considerable—from 23% in Atlanta and 51% in Los Angeles to 87% in New York in affirmative cases (Table 4)

Outcomes: while representation makes a considerable difference everywhere, the degree of difference varies significantly. The national grant rate for represented asylum seekers in affirmative proceedings was 37%; Seattle, Miami, Houston, and Arlington grant rates are all in the low to mid-20's, while Baltimore and Philadelphia have 54% and 49% grant rates, respectively, for represented asylum seekers (Table 5)

4. Too many asylum seekers lack any kind of representation (let alone competent representation)

INS Asylum Offices: 3 out of 4 were not represented in FY 1998; improved to 2 out of 3 in FY 1999 and so far in FY 2000, but still very low (Table 6)

Immigration Court, Affirmative Cases (which constitute 80+% of all cases): more than 1 out of 3 lack representation (20,000 in FY99) (Table 7)

Detention: as a percentage, more than twice as many detained asylum seekers lack representation when compared with non-detained asylum seekers in defensive proceedings (Table 8)

Sources: EOIR (FY 1999); INS Asylum Office (FY 1998 and 1999)

ASYLUM REPRESENTATION IN IMMIGRATION COURT, FY 1999

Prepared by Andrew Schoenholtz
Georgetown University

Table 1

Asylum Representation in Immigration Court by Outcome, FY 1999

Defensive Grant Rates

	Deny	Grant	Grant Rate
Represented	3,067	1,827	37%
<i>Pro Se</i>	823	77	9%

Affirmative Grant Rates

	Deny	Grant	Grant Rate
Represented	10,616	6,229	37%
<i>Pro Se</i>	3,628	223	6%

Table 2

Asylum Representation in Affirmative Proceedings by No Shows, FY 1999

	<i>Pro Se</i>	Represented
Total Cases	19,919	35,331
No Shows	6,025	1,245
% No Show	30%	4%

Source: EOIR

Table 3

Asylum Representation by Nationality in Immigration Court, FY 1999

Country	Affirmative			Defensive		
	Represented	<i>Pro Se</i>	Total	Represented	<i>Pro Se</i>	Total
Yugoslavia	98%	2%	537	95%	5%	215
Nicaragua	93%	7%	2,480	86%	14%	393
China	90%	10%	5,621	96%	4%	1,657
Sri Lanka	88%	12%	93	99%	1%	347
Cuba	87%	13%	397	70%	30%	843
Russia	81%	19%	1,028	79%	21%	115
Bangladesh	80%	20%	1,133	98%	2%	45
Nigeria	79%	21%	527	79%	21%	238
India	73%	27%	2,563	92%	8%	221
Peru	70%	30%	1,584	89%	11%	107
Pakistan	67%	33%	973	91%	9%	126
Haiti	62%	38%	2,064	85%	15%	517
Laos	59%	41%	111	61%	39%	165
Somalia	58%	42%	1,004	89%	11%	173
Honduras	56%	44%	1,466	69%	31%	228
El Salvador	50%	50%	5,366	77%	23%	1,122
Guatemala	29%	71%	8,055	70%	30%	626
Vietnam	17%	83%	196	57%	43%	381

Source: EOIR

Table 4

Asylum Representation in Immigration Court by Locality, FY 1999

Office	Affirmative			Defensive		
	Represented	<i>Pro Se</i>	% Rep	Represented	<i>Pro Se</i>	% Rep
Arlington	65%	35%	1,359	87%	13%	238
Atlanta	23%	77%	1,826	75%	25%	76
Baltimore	64%	36%	1,080	92%	8%	165
Boston	64%	36%	908	73%	27%	225
Chicago	72%	28%	1,179	81%	19%	320
Detroit	74%	26%	818	94%	6%	227
Houston	69%	31%	625	87%	13%	291
Las Vegas	78%	22%	722	80%	20%	138
Los Angeles	51%	49%	13,023	89%	11%	657
Miami	55%	45%	9,569	88%	12%	1,223
New York City	87%	13%	12,314	98%	2%	1,086
Newark	84%	16%	1,721	93%	7%	350
Philadelphia	78%	22%	693	87%	13%	135
San Diego	47%	53%	842	78%	22%	220
San Francisco	65%	35%	4,285	83%	17%	858
Seattle	70%	30%	238	80%	20%	507
Nationwide	35,331	19,919	55,250	8,437	1,805	10,242

Source: EOIR

Table 5**Asylum Representation in Immigration Court by Locality and Outcome, FY 1999**

Office	Affirmative Grants		Defensive Grants	
	Represented	<i>Pro Se</i>	Represented	<i>Pro Se</i> *
Arlington	25%	4%	35%	0%
Atlanta	5%	0%	15%	0%
Baltimore	54%	6%	55%	0%
Boston	36%	7%	35%	10%
Chicago	37%	15%	28%	9%
Detroit	32%	9%	25%	14%
Houston	23%	3%	21%	38%
Las Vegas	24%	0%	22%	7%
Los Angeles	36%	5%	32%	28%
Miami	22%	10%	27%	8%
New York City	43%	8%	51%	18%
Newark	34%	2%	36%	25%
Philadelphia	49%	4%	34%	0%
San Diego	45%	3%	25%	15%
San Francisco	40%	10%	50%	4%
Seattle	20%	55%	33%	2%
Nationwide	37%	6%	37%	9%

Source: EOIR

* These rates are based on very small numbers of decisions in these local offices.

TABLE 6
 Representation at INS Asylum Offices, FY 00 ALL OFFICES SUMMARY (OCT99-APR00)

CCO	Overall		Granted		Denied		Referred*		Rejected		Closed		Marked No-Show						
	Total	Total Repr.	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%					
ZAR	2,156	1,270	738	58%	86	31	36%	470	218	46%	170	64	38%	18	10	56%	126	15	12%
ZCH	967	303	191	63%	155	69	45%	360	175	49%	92	41	45%	3	1	33%	37	8	22%
ZHN	772	252	124	49%	59	27	46%	303	120	40%	85	48	56%	7	4	57%	46	7	15%
ZLA	5,133	2,351	792	34%	268	78	29%	1,062	245	23%	1,025	102	10%	20	11	55%	374	24	6%
ZMI	2,403	653	200	31%	70	11	16%	1,124	103	9%	304	8	3%	13	5	38%	192	16	8%
ZNK	1,709	544	280	51%	57	21	37%	806	269	33%	159	73	46%	17	7	41%	105	19	18%
ZNY	2,033	714	340	48%	67	17	25%	678	226	33%	351	126	36%	16	3	19%	175	50	29%
ZSF	2,813	1,618	834	52%	118	69	58%	470	231	49%	420	155	37%	24	20	83%	142	36	25%
ALL	17,986	7,705	3,499	45%	880	323	37%	5,273	1,587	30%	2,606	617	24%	118	61	52%	1,197	175	15%

Represented 6,262
 % Rep 35%
 Total cases 17,986

* Non-interviewed referred cases, a small number are not included.

Source: INS Asylum Division

Table 7**Asylum Representation by Placement in Proceedings, FY 1999**

	Defensive	Affirmative	Total
Represented	8,437	35,331	43,768
<i>Pro Se</i>	1,805	19,919	21,724
Represented	82%	64%	67%
<i>Pro Se</i>	18%	36%	33%
	100%	100%	100%
Total	10,242	55,250	65,492

Table 8**Asylum Representation in Defensive Proceedings by Custody, FY 1999**

	Detained	Non-detained
<i>Pro Se</i>	657	1,148
Represented	1,512	6,925
% Represented	70%	86%

Source: EOIR

APPENDIX

Asylum Representation Study Findings

1. Representation matters in pursuing a claim in a complex legal system and in a foreign language

Outcomes: 4-6 times more likely to be granted asylum when represented (Table 1)

No shows: *pro se* are 8 times more likely not to show at Immigration Court (no shows make up 30% of the *pro se* caseload in affirmative cases, over 6,000 in FY 1999) (Table 2)

2. Nationality matters as to who gets represented

Affirmative Cases: 17% (Vietnam) to 98% (Yugoslavia); national average 64% (Table 3)

Defensive Cases: 57% (Vietnam) to 99% (Sri Lanka); national average 82% (Table 3)

3. Locality matters as to who gets represented and just how important representation is to outcome

Representation: the range is considerable—from 23% in Atlanta and 51% in Los Angeles to 87% in New York in affirmative cases (Table 4)

Outcomes: while representation makes a considerable difference everywhere, the degree of difference varies significantly. The national grant rate for represented asylum seekers in affirmative proceedings was 37%; Seattle, Miami, Houston, and Arlington grant rates are all in the low to mid-20's, while Baltimore and Philadelphia have 54% and 49% grant rates, respectively, for represented asylum seekers (Table 5)

4. Too many asylum seekers lack any kind of representation (let alone competent representation)

INS Asylum Offices: 3 out of 4 were not represented in FY 1998; 2 out of 3 were not represented in FY 1999 and first part of FY 2000 (Table 6)

Immigration Court, affirmative cases (which constitute 80+% of all cases): more than 1 out of 3 lack representation (20,000 in FY99) (Table 7)

Detention: as a percentage, more than twice as many detained asylum seekers lack representation when compared with non-detained asylum seekers in defensive proceedings (Table 8)

Sources: EOIR (FY 1999); INS Asylum Office (FY 1998 and 1999)