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Legal Representation Keeps Families Together and Strengthens Public Health:

Findings from New Jersey's Detention and Deportation Defense Initiative Year 1



Prepared by

**NEW JERSEY COALITION FOR
IMMIGRANT REPRESENTATION**

Introduction

Two years ago, New Jersey took the groundbreaking step of funding the **Detention and Deportation Defense Initiative (DDDI)**, a legal representation program that offers free and expert counsel to low-income individuals who are detained and facing deportation in New Jersey. Despite the high stakes for immigrants in deportation proceedings—permanent separation from their families and communities, and at times life-threatening risks in their countries of origin—they generally do not have the right to a state-appointed attorney if they cannot afford one. In fact, in 2019, over 40 percent of individuals who were detained and facing deportation in New Jersey did not have representation in court and had to fight their case alone.¹ This includes U.S. citizens who have been unlawfully detained by U.S. Immigration and Customs Enforcement (ICE).

Only the **second such state-level program nationwide**, New Jersey's DDDI extends crucial due process protections by providing free representation to individuals who are detained by ICE and otherwise could not afford a lawyer.² New Jersey has played a leading role in the broader movement for universal representation—the idea that counsel should be appointed for *all* detained immigrants facing deportation who cannot afford a lawyer—and in pushing back against harsh federal immigration policies.³ After a 2016 report by the Seton Hall University School of Law Center for Social Justice and a working group led by Third Circuit Judge Michael Chagares revealed that only about one-third of those detained in New Jersey had access to legal representation during the study period, a broad coalition of faith-based groups, community organizations, legal service providers, law firms, bar associations, unions, and others came together to draw attention to this problem. Under the leadership of Governor Phil Murphy and the New Jersey Legislature, New Jersey made the decision to provide public funding for immigration representation in fiscal year 2019 and expand that funding in fiscal year 2020. Continued strong state leadership is urgently needed to keep families together and secure the safety of the most vulnerable immigrants.

¹ Transactional Records Access Clearinghouse (TRAC) Immigration Database, "[State and County Details on Deportation Proceedings in Immigration Court](#)." According to TRAC's data collection procedure, the "data accessible through the data tool are based upon analyses by the Transactional Records Access Clearinghouse at Syracuse University of court records obtained from the Executive Office for Immigration Review (EOIR) using the Freedom of Information Act...Because the information in this app is based upon court records, statistics on recent monthly filings will lag behind the actual number of NTAs [Notice To Appear issued by the Department of Homeland Security] that have been issued." It is important to note that TRAC data is comprised of all cases filed, whereas data analyzed in this report was gathered from cases which have already concluded. All TRAC figures cited in this report are based on current case status, rather than the initial filing status. For more information on TRAC's methodology, see TRAC, "[About the Data](#)."

² The first program, the [New York Immigrant Family Unity Project \(NYIFUP\)](#), was founded in 2017 and provides representation for detained immigrants in the state of New York.

³ Vera Institute of Justice, December 2018, "[The Case for Universal Representation: Module 1](#)."

The DDDI has played a critical role in protecting due process for detainees in New Jersey at a particularly challenging moment for immigrants and the state as a whole. In recent years, more immigrants have been detained nationwide and in New Jersey.⁴ At the same time, due to recent changes in law and policy, the chances of winning release and reuniting with family has markedly decreased.⁵

As COVID-19 has spread rapidly in detention centers across the country, DDDI providers have become essential responders, fighting to protect their clients' lives by securing their release from detention before they fall ill. As numerous federal judges have now found, conditions in jails and detention centers make social distancing impossible and carry a dangerously high risk of transmission, including for people with medical vulnerabilities to COVID-19.⁶ All of New Jersey's detention centers have experienced serious outbreaks. Indeed, at least four staff members at Hudson County Correctional Facility have already died from COVID-19 and dozens of immigrants have been reported as testing positive, though the number of immigrants positive for COVID-19 is likely undercounted due to insufficient testing.⁷ At a time when immigration detention has become increasingly dangerous for detained immigrants, the DDDI

Legal representation through the DDDI has made a significant difference in the lives of immigrants detained in New Jersey. Many are long-time residents in New Jersey whose family and friends are U.S. citizens. Some are fleeing violence and persecution in their home countries while others are struggling to extricate themselves from domestic violence and abuse. Here we feature the stories of just a few individuals aided by the program. Names have been changed to protect identities.

Sally is a long-time New Jersey resident who came to the United States from Jamaica decades ago. She suffered years of domestic violence at the hands of her U.S. citizen spouse. After ICE detained her in November of 2019, Sally obtained legal representation through the DDDI. Her attorney quickly won her release. Now out of detention, she continues to pursue immigration relief. Her DDDI attorneys were also able to help her access the services and resources that she needs as a survivor of domestic violence.

⁴ The number of individuals detained nationwide has decreased due to the COVID-19 pandemic. U.S. Immigration and Customs Enforcement, 2020, "[ICE Average Daily Population \(ADP\) and ICE Average Length of Stay \(ALOS\)-FY2020 YTD](#)" (accessed 27 July 2020).

⁵ TRAC Immigration Database, "[State and County Details on Deportation Proceedings in Immigration Court](#)." This database shows that the number of individuals in deportation proceedings in New Jersey has increased by 130 percent from 2016 to 2019, from 9,605 to 22,132. Nationally, the number increased by 147 percent in this same time period, from 255,411 to 631,573. TRAC Immigration Database, "[Outcomes of Deportation Proceedings in Immigration Court](#)." This database shows that the percentage of immigrants ordered deported in New Jersey has nearly doubled from 2016 to 2019, from 35.4 percent to 66.4 percent. Nationally, this percentage has increased from 43.3 in 2016 to 72.2 in 2019.

⁶ See, for example, Vanessa Romo, 26 June 2020, "[Judge Orders ICE To Free Detained Immigrant Children Because Of COVID-19](#)," *NPR*.

⁷ U.S. Immigration and Customs Enforcement, 2020, "[ICE Guidance on COVID-19](#)." Vera Institute of Justice, June 2020, "[The Hidden Curve Estimating the Spread of COVID-19 among People in ICE Detention](#)."

offers a lifeline.

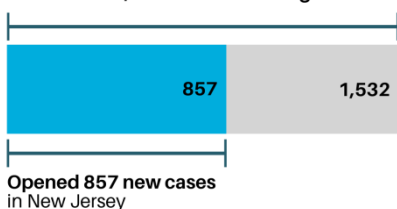
Recent public opinion polling shows that nearly 90 percent of people in the U.S. support government-funded attorneys for individuals in immigration court.⁸ This suggests broad backing for the continuance and expansion of the DDDI's efforts to ensure due process, health, and freedom for detained immigrants in an increasingly perilous environment.

Key Findings

This report describes the DDDI's first year, between November 2018 and October 2019. The findings presented below are largely based on a close analysis of 200 cases opened and concluded in 2019 by attorneys from three out of the four state-funded legal services providers: American Friends Service Committee (AFSC) and legal clinics at Seton Hall University and Rutgers University. In some cases, data was only available from a smaller number of providers. Figures drawn from this subset of data are indicated in the footnotes.

While preliminary, 2019 concluded case data suggests that the DDDI has already impacted representation rates and the success of individual cases, leveling the playing field for people facing deportation and ensuring that families are able to stay together across New Jersey.

In the DDDI's first year of operation, attorneys interviewed 1,532 detained immigrants.



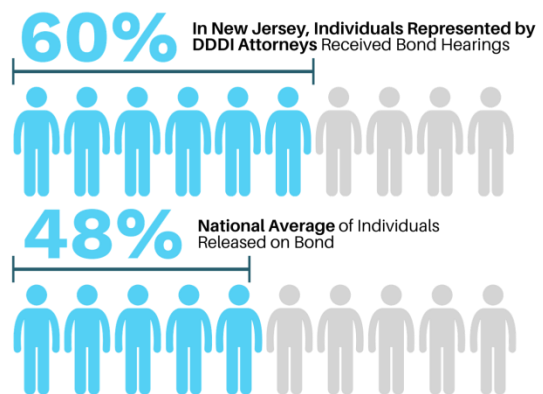
- **Publicly-funded representation expands access to due process for detained immigrants:** DDDI attorneys conducted interviews with 1,532 detainees and opened 857 new cases in New Jersey in the first year of the program's operation, providing the following services: consultations, advocacy and full representation in immigration court.⁹
- **Representation strengthens public health and safety for New Jersey residents as they fight the COVID-19 pandemic: More than half (52 percent) of immigrants who were represented by a DDDI attorney were released from detention.** In comparison, only 17.6 percent of all immigrants facing deportation without representation in New Jersey were released from detention.¹⁰

⁸ Vera Institute of Justice, May 2020, "[Public Support in the United States for Government-Funded Attorneys in Immigration Court](#)," Melissa Garlick, 12 May 2020, "[Communities Need State and Local Deportation Defense Programs Now More Than Ever](#)," *Think Justice Blog*.

⁹ "DDD Summary Activity Report," November 1, 2018 - October 31, 2019, OPRA request documentation.

¹⁰ TRAC Immigration Database, "[State and County Details on Deportation Proceedings in Immigration Court](#)." This database shows that in the 2019 fiscal year, 17.6 percent of immigrants without representation were released from detention in New Jersey. The percentage of immigrants released at the national level was even lower, at 7.5 percent in the 2019 fiscal year. In this same time period, 52 percent of detainees represented by AFSC, Seton Hall, and Rutgers attorneys were released from detention. This percentage was calculated from cases which include individuals who are not eligible for

- **Representation supports family unity:**
Many individuals represented by DDDI are parents with spouses and children who live in the United States.¹¹
- **Representation results in above national average success in releases on bond:** 60 percent of individuals represented by DDDI attorneys who were eligible for and received bond hearings were subsequently released on bond, outpacing the national average of 48 percent released on bond.¹²



DDDI Representation Assists Vulnerable Immigrants in Detention

Even in the best of times, the odds are stacked against immigrants facing deportation and their families. In 2019, 40 percent of people who were detained and had to appear before immigration judges in New Jersey did not have legal representation.¹³ Without a lawyer, detained immigrants are less likely to secure their release from detention and one study found that, from 2014 to 2015 in New Jersey, only 14 percent were able to avoid deportation.¹⁴ Over the past four years, the number of immigrants facing deportation in New Jersey and across the nation has sharply increased and the chances of avoiding deportation once removal proceedings have begun have decreased.¹⁵ It is therefore essential that legal services be made available to detained individuals

bond and therefore cannot be released by an immigration judge while their cases are pending. As described in footnote 1 above, TRAC percentages are calculated from all cases filed whereas percentages in this report are determined from cases which have already concluded.

¹¹ This is an extrapolation based on data reported by AFSC: 71 clients reported having children inside or outside the US (55 percent of all clients) while 54 clients reported having immediate family in the US (44 percent of all clients).

¹² TRAC Immigration Database, 18 June 2020, "[Representation at Bond Hearings Rising but Outcomes Have Not Improved.](#)"

¹³ See footnote 1.

¹⁴ Vera Institute of Justice, November 2018, "[Why Does Representation Matter? The Impact of Legal Representation in Immigration Court.](#)" 2. Lori A. Nessel and Farrin R. Anello, 2016, "[Deportation Without Representation: The Access-to-Justice Crisis Facing New Jersey's Immigrant Families.](#)" Seton Hall Law Center for Social Justice, 15. The 14 percent figure is based on case data from February 1, 2014 to January 31, 2015.

¹⁵ TRAC Immigration Database, "[State and County Details on Deportation Proceedings in Immigration Court.](#)" This database shows that the number of individuals in deportation proceedings in New Jersey has increased by 130 percent from 2016 to 2019, from 9,605 to 22,132. Nationally, the number increased by

in a system that is not easily navigable without the help of a lawyer. A universal representation model does just that, extending legal counsel to those in need and serving as a last line of defense for immigrants and their families.

The DDDI offers legal services to detained immigrants who cannot afford an attorney.¹⁶ With state funding of \$2.1 million in the DDDI's first year, and \$3.1 million in its second year, New Jersey's two largest providers of free legal representation for immigrants facing deportation, Legal Services of New Jersey (LSNJ) and AFSC, work in concert with the immigration clinics at the law schools of Seton Hall University and Rutgers University to provide legal counsel and representation. All four providers serve detained individuals in deportation proceedings, including legal permanent residents, long-time undocumented residents of New Jersey, those seeking asylum, and even U.S. citizens wrongly detained by ICE.

In June 2019, a DDDI provider represented a lawful permanent resident who was born in Germany to a German national mother and a U.S. citizen father who served in the military. In 1971, the client moved to the U.S. with his family when he was only five years old. He served in the U.S. Army and later worked at a U.S. military post in New Jersey. Later in life, he struggled with depression, anxiety, and homelessness after he divorced his spouse. A few petty offenses led him to be detained by ICE and placed in deportation proceedings, after 47 years of living in the U.S. **DDDI attorneys presented evidence that the client was a U.S. citizen and later applied for relief from removal for legal permanent residents. The immigration judge granted his application, allowing him to win release from detention and remain in the United States as a lawful permanent resident.**

A Significant First Step: The DDDI Has Expanded Due Process to Immigrants Detained in New Jersey

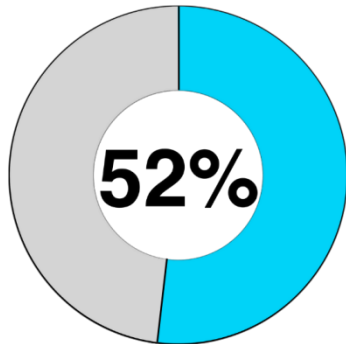
The DDDI offers detained immigrants who cannot afford an attorney, regardless of background, critical professional assistance in navigating complex immigration court proceedings. DDDI attorneys provide services to immigrants including securing bond, winning cancellation of removal, asylum, withholding and Convention Against Torture claims, as well as obtaining removal and voluntary departure orders from immigration court for those who were not granted relief. Detained immigrants who were interviewed hailed from a diverse array of countries of origin, from Guatemala to Ghana to Romania.¹⁷

147 percent in this same time period, from 255,411 to 631,573. TRAC Immigration Database, "[Outcomes of Deportation Proceedings in Immigration Court](#)." This database shows that the percentage of immigrants ordered deported in New Jersey has nearly doubled from 2016 to 2019, from 35.4 percent to 66.4 percent. Nationally, this percentage has increased from 43.3 in 2016 to 72.2 in 2019.

¹⁶ Client eligibility for services is based on a modified net income level based on client household size which cannot exceed 250 percent of the poverty guidelines set by the U.S. Department of Health and Human Services.

¹⁷ "DDDI Summary Activity Report," November 1, 2018 - October 31, 2019, OPRA request documentation.

In the first year of the program’s operation, roughly half of immigrants with DDDI representation secured their release from detention.¹⁸ In comparison, only 17.6 percent of all immigrants in New Jersey facing deportation without representation were released in the 2019 fiscal year.¹⁹ DDDI clients won their release mainly through bond hearings or merits hearings. 60 percent of detained immigrants assisted by DDDI attorneys received hearings to determine if they should be released from detention upon payment of a bond. 60 percent of those who had bond hearings were subsequently released.²⁰ These figures are encouraging as bond grant rates at the national level have held steady at 48 percent since 2018.²¹



Detained Immigrants Released with DDDI Representation in NJ*
*Representation from AFSC, Seton Hall, and Rutgers Attorneys

Nearly 19 percent of immigrants with representation from two DDDI providers remained detained but continued to fight their cases until their merits hearing. This is a final hearing in immigration court in which the judge decides whether the individual will be deported or whether they are entitled to legal status to remain in the United States.²² Over 50 percent of detained immigrants who had a merits hearing were granted immigration relief with the assistance of a DDDI lawyer, thereby avoiding deportation. Given the length of

time required to complete removal proceedings, and the fact that this report includes only concluded cases, this analysis represents a preliminary look at the success rates of detained clients who are denied bond and go forward to a merits hearing.

DDDI Representation Has Led to Family Reunification

Detention and deportation unnecessarily tears families apart, causing lifelong trauma to children and often leaving children in vulnerable circumstances. The DDDI mitigates some of the trauma of detention by providing legal counsel to keep parents and children together. In New Jersey, there are approximately 250,000 children under the age of 18 who live in a low-income household where one or more parent is a non-citizen and therefore potentially deportable. The vast majority of these children are U.S. citizens.²³ **Many individuals represented by the DDDI**

¹⁸ As mentioned above, this figure is based on a subset of cases which were opened in the 2019 fiscal year and have since closed with representation from AFSC, Seton Hall, and Rutgers. It is likely a conservative estimate.

¹⁹ See footnote 10 above.

²⁰ Bond hearing outcomes were not reported for five cases. These were removed from the total number of bond hearings when calculating the percentage of successful releases on bond.

²¹ TRAC Immigration Database, 2020, "[Representation at Bond Hearings Rising but Outcomes Have Not Improved.](#)"

²² This figure comes from completed case data reported by AFSC and Seton Hall for the 2019 fiscal year.

²³ Erika Nava, 27 November 2018, "[New Immigration Rule Will Have Chilling Effect on New Jersey’s Mixed-Status Families.](#)" New Jersey Policy Perspective.

in its first year were parents with spouses and children who live in the United States.²⁴ For example, **39 percent of the individuals represented by one provider who were released from detention were then able to reunite with their immediate family in the United States.**²⁵

Karim, an essential worker who works as a homeless shelter security guard, balances multiple jobs in order to provide for his U.S. citizen wife and daughter. He was detained by ICE after he filed for lawful permanent residence. Karim spent many months detained by ICE at the Essex County Correctional Facility, separated from his wife and their infant daughter. **With the help of his DDDI lawyers, Karim was able to expedite his application for lawful permanent residence and be released from detention.** He continues to care for his family, pursue education and vocational training, and has resumed his job at the homeless shelter.

DDDI Helps Immigrants Win Release and Continue Contributing to New Jersey's Economy

Immigrants are a critical part of New Jersey's communities and economy. Based on data from 2018, immigrants in New Jersey pay an estimated \$29.1 billion in state and local taxes.²⁶ More than 128,508 immigrant entrepreneurs employ 389,508 workers statewide. Additionally, immigrants in New Jersey and their families have more than \$65.8 billion in spending power. When detained immigrants have legal representation, their immigration proceedings move more quickly, dramatically reducing the high taxpayer costs associated with detention.²⁷ Access to representation means that immigrants will be released more quickly and able to rejoin their families and continue contributing to the social and economic fabric of their communities.

Increasing Funding for the DDDI Will Expand the Reach of Representation, Mitigate the Public Health Impacts of COVID-19 and Bolster Racial Justice

New Jersey has taken the important step of partially funding the DDDI. In the face of rising xenophobia and anti-immigrant sentiment in the U.S., New Jersey has boldly committed to extending due process protections to detained immigrants who cannot afford a lawyer. Immigrants are the heart and backbone of many New Jersey communities. Decreasing the number of immigrants who are detained and ultimately deported only strengthens the social and economic fabric of the state. The DDDI's current funding level of \$3.1 million for the 2020

²⁴ As stated in footnote 11 above, this is an extrapolation based on data reported by AFSC: 71 clients reported having children inside or outside the US (55 percent of all clients) while 54 clients reported having immediate family in the US (44 percent of all clients).

²⁵ This figure comes from closed case data reported by AFSC for the 2019 fiscal year.

²⁶ New American Economy, 2018, "[Immigration and the economy in New Jersey.](#)"

²⁷ John Montgomery, 28 May 2014, "[Cost of Counsel in Immigration Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings.](#)" NERA.

fiscal year can provide representation for less than 20 percent of low-income individuals facing detention and deportation in New Jersey during a typical year unaffected by pandemic conditions. A state funding increase to \$15 million would make it possible to extend the DDDI's services to all detained immigrants, keeping families together, supporting New Jersey's economy and ensuring due process for all.

Legal representation and a fair chance at release from detention is even more crucial as New Jersey battles the COVID-19 pandemic. COVID-19 is spreading through detention centers across the country like "wildfire," as former U.S. Immigration and Customs Enforcement (ICE) Director John Sandweg has warned.²⁸ Because staff and vendors regularly enter and exit the facility, doctors who contract with the U.S. Department of Homeland Security have likened a detention center to a "tinderbox" that can repeatedly reignite new outbreaks of COVID-19.²⁹ While detained, immigrants have no way to socially distance themselves, turning detention into a potential death sentence and public health risk for all those who live in New Jersey.

Camilo is a 32-year-old from Mexico who has lived in New Jersey for over 14 years. He has worked for many years in landscaping to support his U.S. citizen son and other relatives, including a brother who was recently diagnosed with a brain tumor. ICE detained Camilo at his South Jersey home in March 2020 as he was leaving for work. He was then detained at the Elizabeth Detention Center for over four months while the COVID-19 pandemic raged inside the facility. He was unable to find an attorney to represent him at his initial court appearances and had to appear *pro se*. **After being screened by a DDDI provider, an attorney took on his case, helping him file applications for immigration relief. Camilo ultimately won his release through a bond hearing and he has since returned to his home and reunited with his family in New Jersey.**

All of New Jersey's detention centers have reported cases of COVID-19. At Essex County Correctional Facility (ECCF) ICE reported that at least eight detained immigrants have tested positive.³⁰ CoreCivic, the for-profit company that runs the Elizabeth Detention Center (EDC) announced in May that one guard at its facility died of COVID-19.³¹ CoreCivic previously reported that 18 detained immigrants tested positive for the coronavirus at EDC.³² Four employees had died at Hudson County Correctional Facility as of April.³³ However, because of inadequate testing of people in detention, and in light of the much higher reported rates of infections among staff, the infection rate for those detained at these facilities is likely much

²⁸ Camilo Montoya-Galvez, 19 March 2020, "['Powder kegs': Calls grow for ICE to release immigrants to avoid coronavirus outbreak](#)," *CBS News*.

²⁹ Catherine E. Shoichet, 20 March 2020, "[Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention](#)," *CNN Health*.

³⁰ U.S. Immigration and Customs Enforcement, 2020, "[ICE Guidance on COVID-19](#)."

³¹ Joe Atmonavage, 19 May 2020, "[Attorneys demand release of all ICE detainees from N.J. facility where guard died of coronavirus](#)," *NJ.com*.

³² U.S. Immigration and Customs Enforcement, 2020, "[ICE Guidance on COVID-19](#)."

³³ Monsy Alvarado, 7 April 2020, "[Another Hudson County jail employee dies of coronavirus complications](#)," *NJ.com*.

higher than ICE’s numbers indicate.³⁴ While detained immigrants deserve access to affordable legal representation under any circumstance, the need to fight detention and deportation has become an increasingly urgent matter of life or death.

Access to legal representation for detained immigrants intersects with ongoing struggles for racial justice in New Jersey and across the country. Recent research finds that, as with the criminal legal system, the immigration system is marked by systematic discrimination against immigrants of color. Black immigrants in particular are disproportionately exposed to immigration enforcement and deportation.³⁵ As is now widely acknowledged, people of color also face worse health outcomes if exposed to COVID-19.³⁶

Increasing Funding for the DDDI Will Keep Immigrant Families Together

The DDDI provides legal counsel to the most vulnerable immigrants who confront separation from their families and complex proceedings which are difficult to navigate without an attorney. This increases the chances that immigrants will be released from detention and reunited with their spouses and children. For those who are granted merits hearings before an immigration judge, DDDI representation in many cases helps individuals win immigration relief and avoid deportation. The DDDI thus works not only to ensure access to due process for detained immigrants but also to maintain the integrity of New Jersey’s economy and communities, to which immigrants are essential.

³⁴ For example, 98 Essex County Correctional Facility staff have tested positive for COVID-19 as of July 27, 2020. Essex County Correctional Facility, 27 July 2020, “Current Situational Awareness Report.” See also Vera Institute of Justice, June 2020, “[The Hidden Curve Estimating the Spread of COVID-19 among People in ICE Detention.](#)”

³⁵ New York University Immigrants Rights Clinic and the Black Alliance for Just Immigration, 22 January 2016, “[The State of Black Immigrants.](#)”

³⁶ Centers for Disease Control and Prevention, 24 July 2020, “[Health Equity Considerations and Racial and Ethnic Minority Groups.](#)”

About the New Jersey Coalition for Immigrant Representation

The New Jersey Coalition for Immigrant Representation leads the campaign to advance a fully funded universal representation program that ensures access to representation for all low-income New Jerseyans who are detained during deportation proceedings. Coalition members include:

American Civil Liberties Union of New Jersey

American Friends Service Committee, Immigrant Rights Program

Church World Service Immigration and Refugee Office (Jersey City)

First Friends of NJ/NY

Make the Road New Jersey

New Jersey Policy Perspective

Rutgers Law School Immigrant Rights Clinic

Seton Hall Law School Immigrants' Rights/International Human Rights Clinic

Unitarian Universalist FaithAction NJ

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