

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/immigration-courts-are-acting-like-business-as-usual-during-the-pandemic-with-dire-consequences>

Public Facing Advocacy Writing

John Peng could barely hear his client, Michael*, as he testified by video teleconference in front of a judge who would determine whether he would face deportation and separation from his teenage daughter. Michael had called in from the Bergen County Jail, a New Jersey facility that detains immigrants for U.S. Immigration and Customs Enforcement (ICE). Peng, an Immigrant Justice Corps fellow and New York Immigrant Family Unity Project (NYIFUP) attorney with Prisoners Legal Services (PLS) of New York, appeared by telephone from his apartment, where he has worked since the COVID-19 pandemic struck. Despite audio issues, he tried to make the best possible case that Michael deserved protection under the United Nations Convention against Torture.

Protecting the rights of immigrants facing deportation has always been challenging. But the pandemic has made it harder to communicate with clients, coordinate witnesses, and obtain evidence. Immigration courts and detention facilities have failed to provide adequate technology, time, and support to ensure due process.

They've seen it as business as usual, Peng said.

Before the pandemic, Peng could enter detention centers to assist clients like Michael. However, once in-person visitation became unsafe, clients and attorneys have had to contend with limits on the number of calls permitted each month, inadequate technology leading to dropped calls, and poor reception. Even when detention officials are cooperative, calls are often missed due to understaffing or lack of organization.

Plans to have Michael receive a formal psychological exam were nearly crushed because the facility where he was initially held would not set up equipment for confidential remote evaluations. Only once Michael was transferred to Bergen County was Peng able to arrange an exam to support his application for protection. In December, an immigration judge granted that protection, and Michael was able to return to his daughter.

Peng says some of his clients have suffered because courts will not make allowances for the difficulties associated with case preparation during the pandemic. Overwhelmed hospitals are slower to send medical records and letters of support, and records like pay stubs are harder to obtain. This type of documentation can be critical to showing an immigration judge the basis for a person's legal claim, the strong connections they have to their community, or other reasons why they should be released and return to their home in the U.S. Still, attorneys are being asked to prepare cases in timeframes as short as 30 days or less.

We are just constantly, frantically trying to comply with judges' orders, Peng said.

One judge ordered one of Peng's clients deported, saying the court lacked evidence that the client had completed a substance abuse program.

We just didn't have enough time to get those documents and records, said Peng, who plans to appeal. There was more he could have presented to the judge, and he just wasn't given that opportunity.

John Peng, Immigrant Justice Corps fellow and New York Immigrant Family Unity Project (NYIFUP) attorney with Prisoners Legal Services of New York

Despite an increased and challenging workload, Peng and other NYIFUP attorneys continue to push for their clients, going above and beyond to pursue legal strategies even when they are not funded to do so. Although NYIFUP does not currently fund federal court work, Peng and PLS filed a federal suit on behalf of 23 detained immigrants who were especially vulnerable to complications from COVID-19. A judge ruled that ICE had to provide them with certain protections or release them from custody. Shortly thereafter, the New York Civil Liberties Union (NYCLU) joined PLS to file a class action suit that sought to apply those protections to others, resulting in a settlement that requires ICE to affirmatively identify people who are vulnerable to the virus and do just that.

Last month, after a new outbreak of COVID-19 hit the Buffalo Federal Detention Facility, Peng and the NYCLU successfully sought a federal court order directing ICE to develop a vaccination plan for all people held in the facility who meet current eligibility requirements. These types of federal litigation efforts have been necessary to preserve detained immigrants' rights and safety during the pandemic, and to safeguard public health. While NYIFUP providers have risen to the occasion to respond to the need for this litigation, they cannot sustainably continue such work or meet the growing need without additional funding. Peng stresses that far more federal court advocacy is needed to protect immigrants' rights in a complex system that has been made more treacherous than ever by the pandemic and the previous presidential administration.

Under normal circumstances, immigrants with an attorney are up to [10 times more likely](#) to prove their right to remain in the U.S. than those without legal representation. In New York, NYIFUP ensures that those who are detained and in deportation proceedings can be represented by a lawyer regardless of their ability to pay. But other parts of the country lack such public defender-style systems for immigration proceedings. And as for people in those places who are left to face the system alone during the pandemic?

Frankly, it is hard for me to imagine, said Peng. It becomes really impossible to have an adequate chance to just assert your rights.

**Name changed to protect identity.*

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