

A Fighting Chance: The Case for Government-Funded Legal Representation in Immigration Detention

Detention and deportation represent loss of liberty, permanent separation from families and communities, and a potential return to precarious conditions in another country. Even with the stakes this high, people facing deportation – including children and people with disabilities – are not guaranteed an attorney in immigration court in the United States.

The United States is home to the world's largest immigration detention system. (*Saadi et. al*) The immigrant population in the U.S. makes up about 15.6 percent of the total population or approximately 51.6 million people. (*Camarota and Zeigler*) Of this group, it is estimated that 10.99 million are unauthorized immigrants. (*Baker and Warren*) The U.S. immigrant detention system is classified as civil rather than criminal, meaning it is intended to be nonpunitive. Nonetheless, in reality, immigrants in detention—who lack various fundamental constitutional rights—are often held in facilities that closely resemble prisons and jails. (*Longazel et. al*) These immigrants even face the threat of finding themselves in a detention system wherein they could be indefinitely detained considering that there is no federal right that guarantees legal representation for detainees or immigrants thereby reducing their chances of winning their cases. This detention system is not only detrimental to the physical and mental health of the detainee and their children but researchers have also argued that it can also infringe on basic human rights.

A carceral policy change that is integral to solving this is the implementation of government-funded legal representation for detained immigrants. Providing legal counsel for these individuals is a critical step in ensuring their right to a fair hearing, especially in a system where the law is complicated, and detainees often face language barriers, trauma, and lack of access to essential resources. Legal representation would not only help immigrants navigate the immigration court system but also address the significant systemic inequalities in the current detention model. (*“The Right to be Heard from Immigration Prisons: Locating a Right of Access to Counsel for Immigration Detainees in the Right of Access to Courts”*) This policy change is essential for ensuring fairness, improving judicial efficiency, reducing wrongful deportations, and aligning the system with core principles of justice. By guaranteeing legal representation, the U.S. would take a crucial step toward a more humane and just immigration system, safeguarding the rights of some of the most vulnerable individuals in the country.

The current state of immigration detention in the U.S. inherently obstructs the provision of essential legal services to detainees. Studies indicate that merely 37% of immigrants—and only 14% of those held in detention—obtain legal representation. A mere 2% have access to pro bono support. (*Eagly and Shafter*) An article from the American Civil Liberties Union (ACLU) mentions how a detainee, Gabino Medina, was prevented from contacting his immigration attorney by his Immigration and Customs Enforcement (ICE) detention facility in Seneca County. A few days later, Medina was deported to Mexico away from his family in a country he had not lived in since he was five years old. (*Shah*)

The ACLU's report, *No Fighting Chance*, outlines the systemic issues within the legal system that arise due to detained individuals' lack of access to proper legal services. Aside from the fact that three out of four people detained did not have counsel, those who did have it faced other barriers such as being unable to make free, confidential outgoing phone calls to their counsel. This barrier to establishing contact with clients as well and communication is not just confined to phone calls, there are restrictions placed on video-teleconferencing, mail, email, and electronic messaging. Moreover, they found that there is a lack of confidential settings for in-person legal visits and prohibitions on computers and phones for legal visits. These factors increase the likelihood of prolonged detention and wrongful deportations, as many detainees are unable to adequately present their legal defenses. (*Shah and Cho*)

To help this vulnerable community of people, it should be of the utmost priority to provide them with legal representation. There are multiple benefits to government-provided legal representation for detainees. This policy helps the immigrants as well as the U.S. justice system in multiple ways from upholding the principles of fairness and due process, judicial efficiency, reducing wrongful deportation, to providing economic and humanitarian benefits. Legal representation ensures fairness in immigration proceedings by enabling immigrants to understand and assert their rights. Immigration law is notoriously complex, often compared to the Internal Revenue Code in its complexity. Evidence suggests that immigrants with representation are fifteen times more inclined to pursue relief and five and a half times more likely to achieve it than those lacking representation. (*Eagly and Shafter*) Having legal counsel enables detainees to comprehend intricate legal processes, obtain evidence, and construct stronger cases for fairer outcomes. By guaranteeing representation, the immigration system would align more closely

with the principle of due process, ensuring that all individuals, regardless of income, have a fair opportunity to defend themselves.

Moreover, the absence of legal representation contributes significantly to inefficiencies in immigration courts. There are over 2 million pending cases in the US judicial system that are related to immigration. (*“U.S. Immigration Courts See a Significant and Growing Backlog”*) Immigrants often submit incomplete and incorrect cases due to their lack of legal knowledge leading to increased court involvement and additional reviews, further straining the system. Legal representation would enhance the quality of cases and reduce the need for unnecessary court resources, thereby upholding due process and increasing the efficiency of the judicial system. Therefore, streamlining the process through representation would alleviate strain on the court system and expedite case resolutions.

Additionally, multiple studies have found that legal representation increases a person’s likelihood of winning relief by 11 times, and for women with children by as much as 14 times. (*Stave, et. al*)(TRAC) This shows us that immigrants with legal counsel are far better positioned to avoid wrongful deportations. Representation ensures that reasonable claims, such as asylum or relief under U.S. law, are effectively presented and considered. Moreover, the ACLU’s report highlights how systemic barriers to accessing counsel leave detainees vulnerable to deportation without a fair chance to assert their rights. Therefore, legal representation is critical to reducing these injustices and ensuring that individuals are not removed without properly considering their legal claims.

When looking at the costs of funding this, providing legal representation for immigrants can greatly cut down on government expenses by reducing the duration of detention and minimizing the necessity for expensive detention centers. The Department of Homeland Security allocated over \$2 billion each year for immigrant detention using data in 2015, primarily relying on private facilities that charge approximately \$161 per detainee each day. (*Patler and Golash-Boza*) Extended periods of detention not only deplete local economies but also place significant financial burdens on the families of detainees, many of whom experience loss of income and struggle to meet basic necessities. Providing legal representation can speed up the resolution of cases, leading to shorter detention times and costs, while also alleviating the financial pressure on both the government and immigrant families.

It is also important for us to take into consideration that the detention system negatively impacts both the mental and physical health of the detainees due to conditions of neglect, abuse, and poor conditions of confinement. It also places challenges to the economic stability and social networks of the immigrant (*Saadi*). Detention facilities are often under-resourced, with medical systems focused on acute care while neglecting chronic conditions. These effects continue to affect not just the detainee long after their confinement ends but also extend to their families and communities. Moreover, while the detainees are in the system, they are often subjected to structural determinants of health such as experiences of discrimination, racialization, and criminalization which further perpetuate health inequalities. (*Saadi*) By providing legal representation, the government can help mitigate these harms by reducing the duration of detention, ensuring that individuals are treated with dignity, and advocating for better conditions within detention centers.

While the case for government-funded legal representation is strong, it's important to address the concerns and criticisms that are often raised about this policy to fully understand its implications and feasibility. A common argument against providing government-funded legal representation for detained immigrants is its perceived cost. Critics fear that establishing and maintaining such a system would put a serious financial strain on the government. However, evidence from programs like the New York Family Unity Project (*Stave, et. all*) shows that legal representation can save money in the long run. By reducing the time people spend in detention and cutting down on expensive appeals, these programs demonstrate that investing in legal help can lead to lower overall costs related to detention and the court system.

The other concern is the potential pressure on legal resources that such a policy would put. Some argue that there aren't enough qualified attorneys to represent all detained immigrants and that it could overwhelm our current legal system. While this is a valid point, it can be addressed gradually. We could start by slowly increasing legal representation services while investing in training and recruiting more immigration attorneys. This way, the system can grow progressively and won't be stretched too thin. Additionally, enhancing legal education initiatives can help create a steady channel of qualified professionals ready to step in.

Another point often raised is the worry that providing legal counsel might encourage unauthorized immigration, with the belief that guaranteed representation acts as a safety net. However, this idea confounds access to legal help with facilitating illegal immigration. Legal representation is about ensuring fairness and upholding the principles of due process, not about inviting more people to reside in the U.S. unlawfully. By ensuring that every detainee has the

chance to present their case properly, the country shows its commitment to justice rather than promoting illegal activity. Studies have also found that the decision to migrate is influenced by a range of complex factors like safety and economic opportunities, not simply the availability of legal help. When we take a closer look at these counterarguments, it becomes clear that providing government-funded legal representation isn't just a realistic policy—it's a crucial step toward ensuring fairness, efficiency, and justice in our immigration system.

All in all, the U.S. immigration detention system is deeply flawed, leaving thousands of people each year to face extremely high stakes without the tools they need to defend themselves. Immigration law is complicated, and expecting detainees—many of whom don't speak English or have the resources to hire an attorney—to navigate it alone is not just unfair; it's inhumane. Without legal representation, people with reasonable claims are far more likely to be wrongfully deported, detained for excessive periods, or left unable to fight for their rights.

Government-funded legal representation offers a clear and practical solution. It ensures that detained immigrants can fully participate in their own defense, leveling the playing field in a system where the odds are otherwise stacked against them. Evidence shows that representation not only improves outcomes for detainees but also saves the government money by reducing unnecessary detention and appeals. But beyond the logistical benefits, providing legal counsel is about something more fundamental: treating people with dignity and giving them a fair shot. This isn't about making immigration law easy—it's about making it just. Guaranteeing legal representation for detained immigrants is a small but significant step toward a system that prioritizes fairness over bureaucracy, and humanity over indifference.

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