

UNIVERSAL REPRESENTATION:

Filling the Due Process Gap for People in Immigration Court

THE PROBLEM

Universal representation is rooted in the principle that every person deserves due process of law, regardless of immigration status. It is impossible to achieve due process without an experienced lawyer in immigration court. Immigration law is notoriously complicated, ever-changing, and difficult to master even for seasoned practitioners. Only about 37 percent of people in immigration court have lawyers, and for those in detention, the number shrinks to about 15 percent.¹ Because immigration court is technically civil court, there is not yet a constitutionally recognized right to appointed counsel for people facing deportation.

THE SOLUTION

In response to this glaring failure of due process, immigrant communities have begun to organize for the creation of a universal right to counsel, starting in the cities and states where they live. To date, about two dozen state and local governments have committed public dollars to provide free, high-quality legal representation to immigrants in deportation proceedings. While no state or city government has yet allocated sufficient funds to provide lawyers to every person in their local immigration court, most programs preserve the principle of universality. This means that nobody is ineligible just because their case is difficult, because they have a criminal conviction or prior order of deportation, or for any other reason related to their personal history or the merits of their case. Instead, universal representation programs limit eligibility according to income level (focusing on those least able to pay) and by prioritizing people in detention.

The need for counsel is particularly stark for those detained in Immigration Customs and Enforcement (ICE) custody, as it is nearly impossible to meaningfully fight deportation while locked up. ICE has the unfettered ability to transfer detained non-citizens to remote and isolated facilities. These facilities often have limited, if any, access to legal information or even the possibility of

hiring private counsel. As a result, most non-citizens in detention navigate all aspects of the complex U.S. immigration system on their own. Whether lawful permanent residents, unaccompanied children, asylum seekers, or victims of gender violence, they are almost guaranteed to lose their cases and face exile from the United States without legal representation.²

CITY EXAMPLES

The New York Immigrant Family Unity Project (NYIFUP), the first universal representation program in the country, launched in 2013 with \$500,000 from the **New York City** Council. Every year since then, NYIFUP has expanded with increased funds from both city and state legislatures. In 2017 NYIFUP was able to offer free, high-quality legal counsel to every detained person in New York State whose income falls within 200 percent of the poverty line.³

Data from the first three years of NYIFUP showed that attorneys in the program were increasing their clients' chances of success in immigration court by more than 1,000 percent—meaning that a NYIFUP client was 10 times more likely to obtain relief from deportation than a similarly situated person without a lawyer.⁴ The success of NYIFUP has prompted campaigns to replicate the program all around the country. In 2017, **Los Angeles** established the L.A. Justice Fund, which provides \$10 million from a combination of city, county, and private sources to pay for lawyers for immigrants in detention.⁵ In early 2018, the Governor of New Jersey included \$2.1 million in his proposed budget to fund deportation defense.⁶ Momentum is building to create similar initiatives across the country, and new programs have recently launched in places as diverse as **Baltimore, MD; San Antonio, TX; Dane County, WI; Hennepin County, MN; Columbus, OH; and Denver, CO.**

Many of the above jurisdictions participate in the Safe Cities Network, run by the Vera Institute of Justice.⁷ Safe Cities is a program through which Vera provides matching funds to local governments willing to commit

public dollars to launch their own universal representation programs. Not all of these programs follow the universal representation model; some have limited carve-outs for certain groups of people, and some focus on populations other than those in detention.

An advantage for a universal representation campaign is that although the impact of providing someone with a lawyer is huge, the argument for it is relatively conservative. Everyone is entitled to a fair day in court, one in which they have a chance to prove that they are legally entitled to stay here. It might seem radical to say that taxpayers should subsidize the public defense of immigrants, but we all have a vested interest in preventing people from being deported when they have a right to remain.

These programs also save money. Deportation is expensive, not only for the federal government, but also for local and state governments. The Center for Popular Democracy released a white paper showing the economic benefits of NYIFUP to New York State, which estimated that the program would save the state approximately \$9 million.⁸ Providing counsel also increases efficiency within immigration court, which is why programs like NYIFUP have the avid support of immigration judges around the country.⁹

The strongest legal representation programs in the country are the direct result of campaigns led by the community members most impacted by mass deportation. In the case of New York City, it is only through the ongoing leadership of community members—and NYIFUP clients willing to share their stories with the media and with policymakers—that the funding for NYIFUP has been sustained over the last four years. One of the ways that the NYIFUP campaign has been able to keep increasing funding for the program every year is by working continuously with local and national media outlets to generate positive coverage for NYIFUP.

The costs of providing lawyers to immigrants in removal proceedings will vary, depending on several factors including the type and complexity of cases, whether travel is necessary for clients in remote detention, and the need for translation services. While cost per case can vary significantly depending on these factors, based on reports from current programs around the country, a good cost-estimate is approximately \$5000 per case.

POLICY ISSUES

Every jurisdiction is different, and program design must be flexible according to the needs of the community and the political realities on the ground. Here are some widely-applicable best practices when running a campaign for a universal representation program:

- There should be no screening of cases on the merits. Nobody

should be excluded from eligibility on the basis of a prior criminal conviction, prior deportation order, or for any other reason related to the facts or strength of their immigration case.

- If the program must be limited in scope, it should prioritize low-income individuals and those in detention. A merits-blind intake system should decide the cases the program will take on a random basis if there is insufficient funding to represent every eligible person.
- The program should focus on a particular immigration court or courts. Some campaigns for universal representation programs attempt to base program eligibility on residency. However, residency is not always easy to determine or prove, and programs limited by a residency requirement are hard to administer. Instead, most cities choose to focus their program on the immigration court in which their residents are most likely to end up if placed into deportation proceedings.
- The program should provide continuous representation: clients should have representation from the time that their lawyer takes their case and all the way through their immigration court proceedings. In programs focused on detention, this means that clients continue to receive representation even after they receive bond.
- The lawyers who staff the program should have significant removal defense experience. In some cities, the universal representation programs reside within public defenders' offices. Most often, existing staff capacity at local immigration non-profits will not be sufficient to staff new publicly funded programs, but it is important that new attorneys hired in order to fulfill the contract requirements are placed in institutions with strong training and supervision.
- The funding for the program should come from public sources. Proponents of universal representation argue that local governments are stepping in where the federal government has failed to protect the basic due-process rights of those in immigration proceedings. Therefore, it is a public duty to provide these funds. The more cities invest in these programs, the more likely they are to be sustained over the long-term.

LANDSCAPE AND RESOURCES

The **National Immigrant Law Center**, **Center for Popular Democracy** and the **Vera Institute for Justice** all have extensive resources available online.