

A Recent History of Bipartisan, Overwhelming Support for Appointed Counsel to Detainees

Immigrants detained pending deportation proceedings are the **only** individuals the federal government locks up **without** providing a **lawyer**. When Congress has provided appointed counsel for groups far more unpopular than immigrants, it has done so with **overwhelming bipartisan** support, regardless of citizenship.¹ Providing a right to counsel reflects American due process values.²

- **1984:** Congress provided appointed counsel to serious federal **criminal defendants** at bail hearings³ in the Bail Reform Act of 1983.⁴
- **2006:** Congress provided appointed counsel to **sex offenders** at post-conviction civil commitment hearings,⁵ with a **unanimous** Senate vote for the Adam Walsh Child Protection and Safety Act of 2006, written by Sen. Orrin Hatch.⁶
- **2012:** Congress provided appointed counsel to **Al Qaeda suspects** at military detention hearings,⁷ with a House vote of **283-136**⁸ and a Senate vote of **86-13**⁹ for the National Defense Authorization Act for Fiscal Year 2012.
- **2013:** Counsel for immigrant detainees would be **equally uncontroversial**.
 - o **76 percent** of Americans support that "immigrants can have legal representation if they face deportation."¹⁰
 - o Immigrants are **different** from **sex offenders** and **Al Qaeda**.
 - o Detention without counsel is "un-American."¹¹ If detention increases, so should appointed counsel.

¹ Mark Noferi, *Deportation Without Representation*, Slate.com (May 15, 2013), at http://www.slate.com/articles/news_and_politics/jurisprudence/2013/05/the_immigration_bill_should_include_the_right_to_a_lawyer.html.

² New York City Bar Association, *Letter to Senate Judiciary Committee Advocating Appointed Counsel* (Apr. 24, 2013), available at <http://bit.ly/105sqW0>.

³ 18 U.S.C. § 3142(f) ("right... if financially unable to obtain adequate representation, to have counsel appointed.").

⁴ Senate Report No. 98-225, S. Rep. No. 225, S. REP. 98-225 (1983).

⁵ 18 U.S.C. §4247(d) (2006) (if "financially unable to obtain adequate representation, counsel shall be appointed"), citing 18 U.S.C. §3006A (2006) (Criminal Justice Act which provides appointed counsel to federal criminal defendants).

⁶ <http://www.govtrack.us/congress/bills/109/hr4472>.

⁷ National Defense Authorization Act for Fiscal Year 2012, H.R. Rep. No. 112-329, at 269-270 (2012) (Conf. Rep.) (Sec. 1024(b)(2): "An unprivileged enemy belligerent may, at the election of the belligerent, be represented by military counsel"), available at <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt329/pdf/CRPT-112hrpt329-pt1.pdf>.

⁸ <http://www.govtrack.us/congress/votes/112-2011/h932>. Current House Judiciary Committee Representatives who voted for the bill include: Amodi (R-NV), Bachus (R-AL), Chabot (R-OH), Farenthold (R-TX), Franks (R-AZ), Gohmert (R-TX), Issa (R-CA), Jordan (R-OH), King (R-NY), Marino (R-PA), Poe (R-TX), Sensenbrenner (R-WI), Smith (R-TX), and Lee (D-TX). Current House Homeland Security Committee Representatives who voted for the bill include: Barletta (R-PA), Broun (R-GA), King (R-IA), McCaul (R-TX), Meehan (R-PA), Miller (R-MI), Palazzo (R-MS), Rigell (R-VA), Rogers (R-AL), Smith (R-TX), King (R-NY), Marino (R-PA), Deutch (D-FL), Higgins (D-NY), Keating (D-MA), and Lee (D-TX).

⁹ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=1&vote=00230.

¹⁰ Belden Russonello Strategists LLC, *American attitudes on immigration reform, worker protections, due process and border enforcement* 1 (Apr. 2013) available at <http://cambio-us.org/cirpoll2013/>.

¹¹ "It is un-American to detain someone, send them to a remote facility where they have no contact with family, place them in legal proceedings where they are often unable to comprehend, and not to provide counsel for them." Paul Grussendorf (former immigration judge), *Building an Immigration System Worthy of American Values, Hearing Before S. Comm. on the Judiciary, 113th Cong.* 8 (2013), available at <http://www.judiciary.senate.gov/pdf/3-20-13GrussendorfTestimony.pdf>.