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Please Note: the arguments contained herein do not reflect an economic analysis, but are instead intended to provide a conceptual framework for understanding where costs could be saved upon the appointment of counsel in immigration proceedings. The debate over comprehensive immigration reform should properly include concepts behind potential savings; however, further study is required to more accurately quantify the savings themselves.

Why Right to Counsel in Deportation Proceedings Won’t Break the Bank
Talking Points

The New York City Bar Association ("City Bar") supports providing appointed counsel to all indigents in immigration removal proceedings—especially detainees—because counsel ensures fairness and due process when liberty and livelihood are at stake.1 It is an “obvious truth,” as the Supreme Court said 50 years ago, that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”2 And there is no citizenship test for counsel in America—it is provided to citizens and non-citizens alike.

Moreover, appointed counsel to indigent non-citizens saves the government money by:

1. reducing the time non-citizens spend in costly detention;
2. preventing unnecessary court proceedings and appeals; and
3. relieving government burden to support disrupted families.

1. Reducing Costly Detention
   - Providing counsel to detainees would likely reduce time in costly detention, by either speeding release or well-counseled removal.
     - DOJ estimated that immigration detainees who received know-your-rights presentations before a first court hearing spent 11 fewer days in detention.3
     - Detention costs $164/day/person—nearly $60,000/year for about 34,000 beds, costing DHS $2 billion/year.4
     - $60,000/year could instead pay a lawyer for hundreds of detainees.5

2. Preventing Unnecessary Court Proceedings
   - Counsel would make immigration proceedings more efficient, prevent appeals, and reduce the enormous immigration court backlog.
     - Because a substantial number of respondents are pro se, courts will grant multiple continuances to provide time for immigrants to seek counsel or prepare for their case.6 Appointed counsel would reduce continuances and allow immigration courts to operate more quickly, like other courts.
       - 23% of all continuances in removal cases were granted to find an attorney, with another 21% to allow an immigrant time to prepare, averaging 53 and 66 days respectively.7
       - For detainees, continuances equal costly detention.8
       - Counsel would allow parties to confer at pre-trial conferences, an effective way to manage dockets and narrow issues at trial, like other civil courts.9
Immigration Judges consistently support quality lawyers for immigrants.

- 92 percent of surveyed immigration judges agreed with the statement, “When the respondent has a competent lawyer, I can conduct the adjudication more efficiently and quickly.”

- Counsel would likely reduce appeals by resolving issues at the trial level.

  - Each appeal to a federal Circuit court costs the government nearly $8,000 for judges to hear and government lawyers to litigate.

- Appointed Counsel would reduce the enormous immigration backlog—now an all-time high of 333,433 cases, on average taking a year and a half (554 days).

  - Making immigration proceedings more efficient helps determine more quickly who legitimately should stay or be deported.

  - Faster and more accurate decisions benefit everyone—immigrants, families, and the American public.


- A lawyer that helps prevent detention and deportation can help avoid taxpayer-supported social costs that, although hard to quantify, are real.

  - Many parents are detained and deported every year.

    - Each year, 90,000 parents are deported nationally.

    - Additionally, parents are over-detained.

      - In New York from 2005-10, ICE detained without bond over 10,000 parents of US citizen children, representing more than a third of the 27,500 people held without bond.

      - Another 20% of those who couldn’t pay bond had US citizen children.

- Detention and deportation of parents causes social costs for children.

  - For example, in 2011, more than 5000 children were in foster care as a result of their parent’s deportation.

  - Foster care for a child costs over $25,000 per year.


7. OIG at 30.

8. One estimate for detainees was that each such continuance cost the taxpayer between $8,745 and $10,880. “In other words, just a few continuances in one case cost as much money as a single attorney who could represent..."
ings_final_3_22_13.pdf.

Immigration-Removal-Adjudication-Final-June-2012.pdf. The Administrative Conference of the United States is a bipartisan panel consisting of 15 Democrats and 15 Republicans.

10 Benson and Wheeler at 56.


13 Benson and Wheeler at 1 (arguing that a court should provide “just, speedy, and economical determination of matters submitted to it”).


15 NYU School of Law Immigrant Rights Clinic et al., Insecure Communities, Devastated Families: New Data on

16 Wessler at 2.