



**REPORT ON LEGISLATION BY THE
IMMIGRATION AND NATIONALITY LAW COMMITTEE
AND TASK FORCE ON CIVIL RIGHT TO COUNSEL**

S.901

Sen. Gillibrand

AN ACT to provide access to counsel for children and other vulnerable populations

Funding Attorneys for Indigent Removal (FAIR) Proceedings Act

THIS BILL IS APPROVED

The New York City Bar Association has long supported the expansion of legal representation in immigration court proceedings in order to promote due process¹, and we gladly welcome the introduction of the Funding Attorneys for Indigent Removal (FAIR) Proceedings Act, which seeks to increase access to counsel in those proceedings. Children and survivors of torture should not be compelled to appear without counsel in proceedings where an incorrect decision could result in their prolonged detention, denial or loss of immigration status, separation from their families, and even deportation to possible persecution and death.

The FAIR Proceedings Act would guarantee access to government-funded legal counsel during removal proceedings for children, individuals with disabilities, victims of abuse, torture, and violence, and those living at or below 200 % of the federal poverty line. This would be a dramatic

¹ New York City Bar Association, *Restoring Civility, Due Process, and Functionality to the United States Immigration System* (Feb. 10, 2021), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/immigration-reform-biden-harris-transition-recommendation>; New York City Bar Association, *Ensuring Right to Counsel For Minors Facing Removal Proceedings: Testimony* (Dec. 19, 2018), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ensuring-right-to-counsel-for-minors-facing-removal-proceedings-testimony>; New York City Bar Association, *Letter to Mayor de Blasio Regarding Due Process, Universal Representation, and the New York Immigrant Family Unity Project* (June 1, 2017), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-mayor-de-blasio-regarding-due-process-universal-representation-and-the-new-york-immigrant-family-unity-project>; New York City Bar Association, *City Bar Welcomes NERA Report Finding Appointed Immigration Counsel Would Pay for Itself* (May 30, 2014), <https://www.nycbar.org/media-listing/media/detail/city-bar-welcomes-nera-report-finding-appointed-immigration-counsel-would-pay-for-itself>; New York City Bar Association, *The Right to Counsel for Detained Individuals in Removal Proceedings* (Aug. 2009), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-right-to-counsel-for-detained-individuals-in-removal-proceedings-august-2009> (all websites last visited March 22, 2021).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

and long overdue change. Although the consequences of an immigration case can have far greater impact on an individual's life than many criminal proceedings, immigration adjudications are considered civil, with no right to appointed counsel.

Over the last twenty years, more than half of the five million people in immigration court faced those proceedings without an attorney.² Representation rates are even lower in rural communities and in detention.³ Access to counsel is especially important in immigration cases, due to the high stakes, complexity of the law, and special vulnerabilities of respondents. Immigration court has been likened to adjudicating death penalty sentence cases in traffic court.

There are a multitude of challenges inherent in immigration proceedings that could be ameliorated by the presence of counsel. Many respondents cannot speak or read English, come from countries with completely different or corrupt legal systems, fled their countries with nothing, struggle with symptoms of Post-Traumatic Stress Disorder, or are even appearing as unaccompanied children. Moreover, attorneys for the Department of Homeland Security prosecute all immigration cases, creating an imbalanced system where one side is always represented and the other is not. The presence of counsel encourages accountability and supports due process.

A study in New York showed that non-detained respondents represented by counsel achieved a successful outcome in immigration court in 74% of cases, defined as either relief granted or termination of their case, while those who had no representation were successful in only 13% of cases.⁴

This legislation also proposes several other key changes, including a legal orientation program for noncitizens at immigration facilities and the right for noncitizens to review evidence that the Department of Homeland Security intends to use in court.

The New York City Bar Association reiterates its longstanding position in favor of expanding legal representation in immigration court proceedings and urges Congress to pass the FAIR Proceedings Act as an essential measure to promote fairness and justice in the immigration courts.

Immigration and Nationality Law Committee
Danny Alicea, Chair

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² Transactional Records Access Clearinghouse (TRAC), *Details on Deportation Proceedings in Immigration Court*, (updated Feb. 2021), <http://trac.syr.edu/phptools/immigration/nta/>.

³ *Id.*

⁴ *Accessing Justice, The Availability and Adequacy of Counsel in Immigration Proceedings*, New York Immigrant Representation Study (Dec. 2011), <https://justicecorps.org/app/uploads/2020/06/New-York-Immigrant-Representation-Study-I-NYIRS-Steering-Committee-1.pdf>.