

Statement for the Record
Submitted to the U.S. Senate Committee on the Judiciary

“Closing the Justice Gap: How to Make the Civil Justice System Accessible to All Americans”

Submitted by

Laura Vazquez
Director, Immigrant Integration
UnidosUS
Raul Yzaguirre Building
1126 16th Street, NW, Suite 600
Washington, DC 20036-4845

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On behalf of UnidosUS, we respectfully submit this statement for the record to elevate the civil legal needs of immigrants and their families.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic civil rights and advocacy organization. Since 1968, we have challenged the social, economic, and political barriers that affect Latinos through our unique combination of expert research, advocacy, programs, and an Affiliate network of nearly 300 community-based organizations across the United States, including Puerto Rico.

Throughout our history as an organization, UnidosUS has united communities and diverse groups seeking common ground through collaboration and a shared desire to make our country stronger and to achieve an immigration system that is fair, just, and accountable to the rule of law—an immigration system of which we can all be proud of.

Unmet Civil Legal Needs in Immigration

We welcome the opportunity to bring attention to the civil legal needs of immigrants and their families as they try to navigate our country's complex immigration system. It has been well documented that there are not enough immigration lawyers to meet the demand for qualified immigration assistance. Immigrants in removal proceedings do not have a constitutional right to counsel as they seek to make their case to immigration judges. Millions of immigrants and their families also lack access to qualified immigration legal services to assist them in understanding their eligibility for immigration status and completing complex immigration forms.

The justice gap in immigration is huge. According to the Center for Migration Studies, across the country on average, there are 1,413 undocumented immigrants for every one nonprofit legal service professional, and in some parts of the country that ratio increases to more than 4,000 undocumented immigrants to one legal services professional.¹ This capacity gap does not take into account the myriad of applications and proceedings where immigrants lack effective legal assistance. The need for these services ranges from representing asylum applicants and those immigrants facing removal, to assistance in filing applications for naturalization or petitions to sponsor relatives. In short, there is an enormous gap between the supply of qualified immigration legal service providers and the demand for their services.

Another study found that because of the increasing demand for representation in immigration court, fewer immigrants are able to find representation. Five years ago, noncitizens had found legal representation in 65 percent of all pending cases in immigration court, but today, this proportion has dropped to just 30 percent, meaning that 70 percent of immigrants go to court without an advocate.² This despite increased interest in providing pro bono representation in immigration court.³ The New York Times recently featured a number of newly arrived asylum seekers with upcoming immigration court dates who may have credible claims to asylum but won't be able to find immigration representation to keep them from being deported.⁴

¹ Donald Kerwin & Evin Millet, "Charitable Legal Immigration Programs and the US Undocumented Population: A Study in Access to Justice in an Era of Political Dysfunction," 10 J. ON MIGRATION & HUM. SEC. 190, 190 (2022). <https://cmsny.org/publications/jmhs-kerwin-millet-092822/>

² TRAC, "Too Few Immigration Attorneys: Average Representation Rates Fall from 65% To 30%," (Syracuse: TRAC, Jan 24, 2024), <https://trac.syr.edu/reports/736/>

³ TRAC, "Despite Efforts to Provide Pro Bono Representation, Growth Is Failing To Meet Exploding Demands," (Syracuse: TRAC, May 12, 2023), <https://trac.syr.edu/reports/716/>

⁴ Edgar Sandoval, "A New Challenge for Asylum Seekers: Lawyer Shortages," New York Times, May 19, 2024, <https://www.nytimes.com/2024/05/19/us/migrants-lawyer-shortages.html>

The consequences of the justice gap are significant. Lack of effective legal representation has profound effects on an immigrant's ability to obtain asylum or other relief from deportation and to avoid or minimize detention while their claims are adjudicated. For those with potentially valid claims who might be returned to unsafe conditions abroad, non-existent or ineffective legal representation could be a matter of life and death.

Asylum and removal proceedings are just two of the areas where lack of legal assistance undermines immigrants' access to due process. For some applicants, their prospects for adjustment to permanent residence and naturalization could face adverse consequences if they file applications without legal assistance. There are approximately 9 million lawful permanent residents likely eligible to naturalize, but many of them hesitate to apply when facing a complex application form and fear making a mistake. According to one study, 35 percent of eligible-to-naturalize immigrants in Massachusetts considered lack of information on how to complete the application a top obstacle in naturalizing and subsequent interviews confirmed that they found the N-400 language complex.⁵ Another example is the recent announcement by the Biden administration that will establish the opportunity for undocumented spouses of U.S. citizens to apply on a case-by-case basis for adjustment of status. To implement this policy will require immigration legal assistance to make the civil justice system accessible to American families.

Solutions to Address Unmet Civil Legal Needs of Immigrants and their Families

The benefit of qualified legal assistance for immigrants often ensures more efficient and more just processes, since represented claims made with legal assistance are better prepared, resulting in fewer requests for additional evidence and often resolved before they reach the immigration courts.

Fortunately, there are areas of innovation and opportunities to scale programs to provide qualified immigration legal services if there was adequate funding to support them. Community-based immigration legal service providers are innovating new models and practices to grow capacity and assist more people. At the center of community-based immigration legal services programs is the Recognition and Accreditation (R&A) Program within the U.S. Department of Justice. The program was established by regulations in the 1950s and "aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice." Increasing the number of accredited representatives "would provide immigrants with accurate counsel and advice about the availability of immigration relief; reduce backlog and delay in the immigration agencies; and ensure the individual has a competent advocate demanding fair adjudication of his or her application for immigration relief."⁶

To grow their capacity to assist more people, community-based organizations are working to increase the numbers of accredited representatives and establishing career pathways for community-based immigration programs to provide immigration assistance. For example, The Resurrection Project has created the first of its kind fellowship program to train more accredited representatives. Now recruiting for its third cohort of fellows, the program has been successful at recruiting immigrants or children of immigrants who have personal experience with the immigration system, have cultural competency and language skills that are valued and contribute to successful programs that are trusted by the community. The program was conceived

⁵ National Immigration Forum and the New Americans Campaign, "The Road to Naturalization: Addressing the Barriers to U.S. Citizenship," (Washington, DC: National Immigration Forum, September 16, 2016), <http://immigrationforum.org/wp-content/uploads/2016/09/The-Road-to-Naturalization.pdf>

⁶ Erin Corcoran, "Bypassing Civil Gideon: A Legislative Proposal," 115 W. VA. L. REV. 643 (2012-2013) https://scholars.unh.edu/cgi/viewcontent.cgi?article=1026&context=law_facpub

and designed following a research study of the increasingly high needs for immigration legal services.⁷ There is also an innovative career pathway in immigration legal services programs in community colleges in California that is training students to be ready to apply for accreditation that could be scaled.⁸

Another innovation involves online training courses like one established by an immigration law professor at Villanova University that enables graduates to have the foundational skills needed to apply to the Department of Justice to become accredited representatives.⁹

We urge the committee to consider ways that it can invest in these innovations that could make a difference in access to justice if they were properly supported. For example, Congress can establish and expand programs for additional training for accredited representatives and investments in the career pathway to not only narrow the justice gap, but at the same time bring in qualified accredited representatives that are representative of the communities they are working in and bring cultural competency and language skills.¹⁰ We commend the committee for holding this hearing and encourage the committee to see accredited representatives as a critical component of the solution to closing the justice gap.

⁷ Rob Paral and Associates, “Assessing Capacity to Provide Legal Services to Undocumented Immigrants in Illinois,” <https://resurrectionproject.org/assessing-legal-capacity/>. Similar assessments of the need for more immigration legal services capacity have been conducted in California and New York.

https://www.gcir.org/sites/default/files/resources/GCIR_Legal-Services-Assessment-2020-and_2022-Update_STC.pdf and

https://static1.squarespace.com/static/5e59359723b7d46f1ba15b75/t/61b2323967a34a20415219c1/1639068217665/JusticeforAll_Report-2021-3.pdf

⁸ Immigration Legal Services Pathway Fellowship <https://communitylearningpartnership.org/cylc-immigration/>

⁹ Dynahlee Padilla, “Villanova Offers Online Certificate Program to Train Immigrant Advocates,”

<https://www.diverseeducation.com/latest-news/article/15108126/villanova-offers-online-certificate-program-to-train-immigrant-advocates>

¹⁰ Mike LaSusa, “Nonlawyers Fill Void At Overwhelmed Immigration Courts,” Law 360, March 11, 2022

<https://www.law360.com/articles/1469550/nonlawyers-fill-void-at-overwhelmed-immigration-courts>