

ACCESS TO AMERICA: Empowering Detained Immigrants with Access to Justice

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Abstract

The U.S. immigration system continues to detain immigrants who seek to enter the country at incredibly high rates. Only 19.4 percent of detained noncitizens are represented in their immigration hearings, which often effectively have life-or-death consequences. Noncitizens face a host of physical and informational barriers in detention that impede their ability to find legal representation or successfully represent themselves in immigration court. The access to justice framework seeks to address this problem by identifying various ways to provide competent legal support to immigrants in detention. This Article examines the opportunities and limitations of universal representation programs, accredited representatives, and the Legal Orientation Program. While all three provide partial relief to this issue, this Article argues that the programs working in conjunction with one another would be most effective to begin to tackle this massive crisis.

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Introduction

“It’s like an automatic deportation if you don’t have a lawyer.”

Carlos, immigrant in ICE detention¹

Retired immigration judge Dana Leigh Marks observed that immigration cases “often involve[] life and death consequences,” but were “heard in traffic court settings.”² “[A]n order of deportation can, in effect, be a death sentence,” given that people in immigration court are often fleeing persecution, health hazards, or severe economic difficulties.³ Being represented makes a significant difference in these hearings, as data indicates that detained immigrants who are represented—as compared to those who are appearing in court pro se—are ten-and-a-half times more likely to have a positive outcome in

1. Mazin Sidahmed, *‘It’s Like an Automatic Deportation if You Don’t Have a Lawyer,’* N.Y. TIMES (Aug. 13, 2019) (<https://www.nytimes.com/2019/08/13/opinion/facing-the-injustice-of-immigration-court.html>).
2. Dana Leigh Marks, *Immigration Judge: Death Penalty Cases in a Traffic Court Setting*, CNN (June 26, 2014) [<https://perma.cc/4RWF-N9G8>].
3. *Id.*

their hearing.⁴ However, not having representation is a reality for the vast majority of detained immigrants.⁵ Currently, while noncitizens have a right to obtain counsel for their immigration proceedings, the government will not provide one at its expense.⁶ The only exception to the lack of government-funded representation for immigrants is for detained noncitizens who are deemed “mentally incompetent to represent themselves.”⁷ Further exacerbating the issue, non-profits receiving funding from Legal Services Corporation, a congressionally created and funded program,⁸ are not allowed to represent undocumented noncitizens.⁹ As of February 2024, 61.5 percent of non-detained immigrants had legal representation, compared to only 19.4 percent of detained immigrants.¹⁰ This surprisingly high percentage of non-detained immigrants with legal representation underscores the extent that barriers to accessing justice in detention centers impede detained immigrants’ ability to obtain counsel. And as Judge Marks observed, facing this complex system without representation can have devastating consequences.

The criminalization of immigration continues to penalize and punish immigrants who seek to enter the United States. As of 2022, there are an estimated 11 million undocumented immigrants in the country.¹¹ Data from March 24, 2024, shows that the daily average of immigrants detained by U.S. Immigration and Customs Enforcement (ICE) is 36,931 people.¹² Out of those detained noncitizens, 23,745—or 64.3 percent—do not even have a criminal record.¹³ But even being considered a convicted criminal by ICE could be due to a violation only punishable by a fine, such as a traffic violation.¹⁴ ICE’s fiscal year

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4. Ingrid Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 49 (2015).
 5. *New Proceedings Filed in Immigration Court Through February 2024*, TRAC IMMIGR. [<https://perma.cc/K6PU-U5C9>] (last accessed May 8, 2024).
 6. 8 U.S.C. § 1229a(b)(4)(A) (2018) (“[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings.”).
 7. Press Release, Executive Office for Immigration Review, Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions (Apr. 22, 2013) [<https://perma.cc/HQX6-3TW7>] (this policy change came after the decision in *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034 (C.D. Cal. 2010)).
 8. *About LSC*, LEGAL SERV. CORP. [<https://perma.cc/JJR4-AYQ3>] (“Established in 1974, LSC operates as an independent 501(c)(3) nonprofit corporation that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans.”).
 9. Brittany Benjamin, Note, *Accredited Representatives and the Non-Citizen Access to Justice Crisis*, 30 STAN. L. & POL’Y R. 263, 267 (2019).
 10. *New Proceedings Filed in Immigration Court Through February 2024*, *supra* n. 5.
 11. Jeffrey S. Passel & Jens Manuel Krogstad, *What We Know About Unauthorized Immigrants Living in the U.S.*, PEW RSCH. CTR. (July 22, 2024) [<https://perma.cc/77Q9-TN6J>].
 12. *ICE Detainees*, TRAC IMMIGR. [<https://perma.cc/2VWZ-5WME>] (last accessed May 8, 2024).
 13. *Id.*
 14. *Id.* (ICE identifies people as convicted criminals “if they have been convicted of any criminal violation,” which encompasses serious felonies, immigration violations, and

2023 report indicates they detained 273,220 people over the course of the year across 150 detention centers.¹⁵ Being detained introduces and imposes a host of significant barriers, both physical and informational, that make accessing justice essentially impossible for noncitizens. These physical barriers include, but are not limited to, the deprivation of physical freedom, inability to pay for an attorney, inaccessible phone lines, strict visitation rules, lack of privacy, deficient law libraries, the forcible transfer to other detention centers, and the remote location of many ICE detention centers.¹⁶ Informational impediments center around the deeply complex nature of the immigration legal system and language barriers. These conditions make it incredibly difficult for immigrants to access information to represent themselves or to be connected with external resources or lawyers.

In short, representation matters. As the late former Chief Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit pronounced:

For immigrants, the stakes could not be greater—whether they can stay in the United States, whether they will be separated from their loved ones, often their children. In all too many cases, I had the sense that if only the immigrant had competent counsel at the very outset of immigration proceedings . . . the outcome might have been different, the noncitizen might have prevailed.¹⁷

The treatment of undocumented immigrants as criminals who require imprisonment in detention centers has a very substantial impact on their capacity to obtain immigration relief. In order to solve this access to justice crisis, solutions must directly address the barriers faced by detained noncitizens. In this Article, I argue that universal representation, which accredited representatives should play a significant role in staffing, is the most effective remedy to this crisis—but it must be accompanied with changes in detention centers that will facilitate actual access for detained immigrants to their representatives, as well as changes in the accredited representation program which will encourage more people to pursue the profession. And until universal representation programs are properly implemented, this Article suggests that the Legal Orientation Program can fill the gap in providing general legal knowledge and referrals to counsel for people in detention centers.

This Article outlines how the access to justice framework can be used to identify access to justice issues and solutions for detained noncitizens. Part I identifies the scope of the representation crisis for detained noncitizens before briefly introducing what access to justice encompasses for this issue. Part II identifies the pertinent barriers noncitizens face in detention, discussing both physical and informational hurdles. Next, Part III offers legal interventions which can empower detained noncitizens in their immigration proceedings.

crimes only punishable by a fine).

15. U.S. IMMIGR. AND CUSTOMS ENF'T, FISCAL YEAR 2023 ICE ANNUAL REPORT 18–19 (2023).

16. See Section II.A.

17. Robert A. Katzmann, *Bench, Bar, and Immigration Representation: Meeting an Urgent Need*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 585, 588 (2012).

Finally, Part IV illustrates a vision for how these legal interventions can work together to begin to dismantle this crisis.

While this Article focuses on how to most effectively and efficiently get representation for detained noncitizens to increase their ability to obtain immigration relief, it is important to note from the outset that these solutions are only band-aids. The only true solution to accessing justice for detained noncitizens is to decriminalize immigration and end the “immigration enforcement regime,” which “criminalizes people of color and funnels people from the criminal legal systems into detention and deportation.”¹⁸ The main rationalizations for immigration detention are deterrence and surveillance to ensure people come to their court proceedings—however, detention does not deter people from immigrating to the U.S., and it is not necessary to ensure people comply with court proceedings.¹⁹ The legal interventions I offer in this Article merely begin to break down barriers to access to justice within the immigration system at large.

I. Background

A. *Scope of the Access to Justice Crisis for Detained Noncitizens*

Immigration courts are intensely congested. In the fiscal year 2024, immigration courts had already received 993,966 new cases by February 2024.²⁰ During this same period of time, 355,372 cases were closed—which is incredibly disproportionate compared to the number of cases being received.²¹ A new immigration court record of three million backlog cases was set in November 2023.²² As of the end of February 2024, there were 3,438,990 cases pending in immigration court.²³ Immigration judges have an average of 4,500 pending cases before each of them.²⁴ This backlog is linked to the shortage of immigration judges, leading to “unprecedented processing times for court hearings”²⁵ and leaving noncitizens not knowing when they will “be able to reunite with families they left behind and integrate fully in American society.”²⁶

This backlog represents a tremendous number of cases going through the immigration system, and the large number of people needing representation

18. *Detention of Immigrants*, VERA INST. OF JUST. [<https://perma.cc/2MKM-K8VN>].

19. *Id.*

20. *New Proceedings Filed in Immigration Court*, TRAC IMMIGR. [<https://perma.cc/K6PU-U5C9>] (last accessed May 8, 2024).

21. *Outcomes of Immigration Court Proceedings*, TRAC IMMIGR. [<https://perma.cc/U9Z4-6S9G>].

22. *Immigration Court Backlog Tops 3 Million; Each Judge Assigned 4,500 Cases*, TRAC IMMIGR. (Dec. 18, 2023) [<https://perma.cc/R3Y2-HTL7>].

23. *Immigration Court Quick Facts*, TRAC IMMIGR. [<https://perma.cc/92HH-FJFK>].

24. *Id.*

25. *U.S. Immigration Courts Face a Staggering Backlog as 3M Cases Pile Up*, BOUNDLESS IMMIGR. (Jan. 16, 2024) [<https://perma.cc/GRJ9-TRYA>].

26. Giovanna Dell’orto, *Fueled by Unprecedented Border Crossings, A Record 3 Million Cases Clog US Immigration Courts*, AP NEWS (Jan. 15, 2024) [<https://perma.cc/GK3V-U7R2>].

makes individual legal representation “increasingly rare.”²⁷ The lack of legal representation in these high stakes court hearings affects those in detention even more devastatingly. As previously noted, data from February 2024 indicates that 61.5 percent of non-detained immigrants had legal representation, compared to only 19.4 percent of detained immigrants.²⁸ Between October 1997 and March 2024, out of the 1,662,041 total detained noncitizens, 1,373,516 people—or 82.6 percent—were given a removal order at the end of the hearing.²⁹ What makes this data even more stark is that only 14.7 percent of those given a removal order, including both detained and non-detained immigrants, had legal representation.³⁰

Data indicates that the impact of representation on immigration outcomes makes a real difference in hearings. Detained immigrants who have counsel are ten-and-a-half times more likely to have a positive outcome in their hearing compared to detained immigrants who appeared in court pro se.³¹ Explanations for these better outcomes include “having an attorney to help navigate the complex removal process” and that detained noncitizens who have representation are “far more likely to pursue relief” in the first place.³²

Detention of noncitizens is also deeply racialized, impacting noncitizens’ ability to obtain representation and receive proper immigration relief. ICE generally has a large amount of discretion in how they make detention decisions. The following is ICE’s description of who they detain:

1) those who are subject to mandatory detention under the Immigration and Nationality Act, 2) those who [Enforcement and Removal Operations] has determined must be detained to secure their presence for immigration proceedings or removal from the United States, or 3) those who pose a risk to public safety or national security or may be considered a flight risk.³³

While ICE is limited in how many people they detain, given that they have “limited detention capacity and appropriated bedspace,” they still have discretion in *who* they deem could be a flight or safety risk.

Unsurprisingly, immigrants of color are significantly more likely to be detained by ICE and less likely to be represented in their removal proceedings. “Black immigrants are [] disproportionately vulnerable to immigration enforcement,”³⁴ generally face longer detention sentences, and have lower chances of being released on bond or parole.³⁵ Of particular significance is the difference between rates of detention and rates of representation for immigrants from Mexico, who are detained 78 percent of the time.³⁶ And whether or not one

27. *Id.*

28. *New Proceedings Filed in Immigration Court Through February 2024*, *supra* n. 5.

29. *Outcomes of Immigration Court Proceedings*, *supra* n. 21.

30. *Id.*

31. Eagly & Shafer, *supra* n. 4.

32. *Id.* at 50.

33. U.S. IMMIGR. AND CUSTOMS ENF’T, *supra* n. 15, at 18.

34. *Detention of Immigrants*, *supra* n. 18.

35. NAT’L IMMIGRANT JUST CTR., LOCKED AWAY: THE URGENT NEED FOR IMMIGRATION DETENTION BOND REFORM, 4 (2023).

36. Eagly & Shafer, *supra* n. 4, at 46.

is detained has a direct correlation to access to representation as immigrants from Mexico were the least likely to obtain representation in removal hearings despite being the largest nationality group in these proceedings.³⁷ These statistics may not even be fully representative of the actual racial disparities in ICE detention. The American Immigration Council reports that at the Torrance County Detention Center in New Mexico, ICE has “failed to systematically document the race of detained individuals,” labeling a much higher number of detainees as “white” than the race they identify with.³⁸ This strips the ability to actually capture the disproportionate enforcement and lengths of detention rates that immigrants of color are subject to. Given this data, people of color immigrating into the U.S. are more vulnerable to immigration enforcement and are less likely to have representation in their immigration hearings.

B. What Does Access to Justice Really Mean?

While access to justice can be defined in many ways, it generally deals “with the ability of people to obtain just resolution of justiciable problems and enforce their rights, in compliance with human rights standards.”³⁹ Access to justice has two main purposes: (1) “[t]he system must be equally accessible to all,” and (2) “it must lead to results that are individually and socially just.”⁴⁰ Relatedly, legal needs are unmet when there is no access to justice. More specifically, a “legal need is unmet if a justiciable issue is inappropriately dealt with as a consequence of effective legal support not having been available when necessary to make good a deficit of legal capability.”⁴¹ Access to justice has many nuances but this general knowledge is sufficient for the purposes of this Article.

In the context of detained noncitizens, access to justice issues arise because they are dealing with not only a foreign legal system, but also an area of law that is complex and requires strong English language skills to understand and be able to submit evidence in English. When there is a lack of legal assistance provided to detained immigrants to navigate this process or even help identify what options are open to them to pursue immigration relief, their legal needs are often not met.⁴² Thus, they do not have access to justice.

II. Access to Justice Barriers in Immigration Detention

Immigration detention centers create substantial physical and informational barriers that make accessing justice in the immigration legal system nearly impossible. The physical barriers make finding counsel incredibly difficult given that detained immigrants have barely any contact with the outside

37. *Id.* at 44.

38. *Torrance County Detention Facility: Troubling Role in Detaining Haitian Migrants During the 2021 Del Rio Incident*, AM. IMMIGR. COUNCIL [<https://perma.cc/HAY5-5SUN>] (Oct. 24, 2024).

39. OECD/OPEN SOC’Y FOUND., *LEGAL NEEDS SURVEYS AND ACCESS TO JUSTICE* 24 (2019).

40. Mauro Cappelletti & Bryant G. Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 *BUFF. L. REV.* 181, 182 (1978).

41. OECD/OPEN SOC’Y FOUND., *supra* note 39, at 24.

42. *Id.*

world. However, even when they are able to find a lawyer, communication barriers can render that representation meaningless. Strict visitation and phone call rules impede the ability of representatives and their clients to communicate about the case and prepare for court proceedings. It is an extraordinary challenge to find a lawyer, and if you do not have one, self-representation is extremely difficult. Informational barriers also present severe access to justice issues. The immigration system is comprised of complicated statutes, court procedures, and case law. To make matters worse, detained immigrants not only have to navigate this information in English, which may not be their native language, but they also must submit documentation for their case to the court in English.

A. *Physical Barriers*

To state the obvious, the main physical barrier that detained noncitizens face in obtaining representation *is* being detained. Detention means not being able to go seek representation in person and having to use the facility's phone lines, which are notoriously unreliable,⁴³ when trying to reach an attorney's office.⁴⁴ But even when immigrants are given counsel, the communication barriers imposed by the detention centers make contact between clients and their attorneys incredibly difficult—if not impossible.⁴⁵ A 2022 American Civil Liberties Union (ACLU) report found communication barriers were pervasive, with a minimum of fifty-eight detention centers that they contacted failing to “allow attorneys to schedule phone calls with a detained client at a certain date and time when the facility will make the detained client available for the call, preventing both routine and time-sensitive communications necessary to representation.”⁴⁶ When attorneys were allowed to schedule calls, those calls were not “consistently honored” at approximately 46 percent of detention centers.⁴⁷ At approximately 85 percent of the detention centers reviewed, immigrants must pay to make outgoing phone calls—paying up to \$0.40 per minute.⁴⁸ A paralegal at Florida's Krome North Service Processing Center shared: “There are also a limited number of phones that actually functionAnd when we could get on the phone and had a somewhat stable connection, the conversations are not fully confidential because the facility doesn't provide private spaces for confidential, legal calls.”⁴⁹ Not only are these phone calls an issue for represented noncitizens, but this eliminates their ability to even try to obtain counsel in the first place.⁵⁰ The necessity for phone calls is even more pronounced for immigrants detained in more remote loca-

43. ADITI SHAH & EUNICE HYUNHYE CHO., NO FIGHTING CHANCE: ICE'S DENIAL OF ACCESS TO COUNSEL IN U.S. IMMIGRATION DETENTION CENTERS, ACLU, 5 (2022) <https://perma.cc/PK2U-T9PR>].

44. *Id.* at 7.

45. *Id.* at 14.

46. *Id.* at 7.

47. *Id.*

48. *Id.*

49. *Id.* at 13.

50. *Id.* at 10.

tions considering it is typically less likely lawyers would be able to make the trip out to the remote facility.⁵¹

Detention centers typically have strict visitation rules. The ACLU report identified eleven detention centers where no in-person legal visits were allowed, and “[o]ver a third of facilities do not allow for ‘contact’ visits or have any in-person visits between attorneys and detained clients.”⁵² At almost half of the detention centers surveyed, attorneys reported “arbitrary delays or denials of access” for reasons that seemed to be to “harass” them and were “unrelated to any reasonable facility concern.”⁵³ When in-person visits were allowed to occur, 44 percent of facilities reviewed did not allow lawyers to bring laptops inside, and attorneys reported that they were not given confidential spaces to talk with their clients.⁵⁴

Physical barriers to justice do not end at the communication barriers. Detained noncitizens are unable to work in detention centers or are only able to work for \$1 a day.⁵⁵ This means that they are very likely to be unable to pay for an attorney, pay for calls with their attorneys if they are represented, or even pay for calls while trying to find a lawyer.⁵⁶ People in detention can also be transferred to facilities that are far away, even to a different state. This further isolates them from their attorney or family and community members who could help them find an attorney.⁵⁷

Physical barriers to justice are exacerbated by the typical locations of detention centers—which are often located in remote, rural areas, with “[m]any of the largest detention facilities [being] located far away from city centers, such as in Pearsall, Texas or Adelanto, California.”⁵⁸ For example, Caroline Detention Center is technically the Washington, D.C. Field Office, but is located over seventy miles away from the city and is inaccessible by

51. *Id.* at 14.

52. *Id.* at 8.

53. *Id.* at 23.

54. *Id.* at 8.

55. *Id.* at 7.

56. Eagly & Shafer, *supra* n. 4, at 34–35.

57. INGRID EAGLY & STEVEN SHAFER, ACCESS TO COUNSEL IN IMMIGRATION COURT, AM. IMMIGR. AND CUSTOMS ENF'T [https://perma.cc/PZG4-ESZ2] (For the purpose of this document this source will now be referred to as Access to Counsel in Immigration Court Report).

58. Eagly & Shafer, *supra* n. 4, at 35 (Despite being the “San Antonio Field Office,” the South Texas ICE Processing Center located in Pearsall, Texas is over 50 miles away from San Antonio); See *South Texas ICE Processing Ctr.*, U.S. IMMIGR. AND CUSTOMS ENF'T [https://perma.cc/EU6M-BEFC] (Driving Directions from South Texas ICE Processing Ctr. to San Antonio, TX, Google Maps (http://maps.google.com) follow “Directions” hyperlink; then search starting point field for “South Texas ICE Processing Center” and search destination field for “San Antonio, TX”). Similarly, despite being the “Los Angeles Field Office,” the Adelanto ICE Processing Center is about 90 miles away from Los Angeles. See *Adelanto ICE Processing Ctr.*, U.S. IMMIGR. AND CUSTOMS ENF'T [https://perma.cc/T9BV-JNMK]; Driving Directions from Adelanto ICE Processing Ctr. to Los Angeles, CA, Google Maps (http://maps.google.com) follow “Directions” hyperlink; then search starting point field for “Adelanto ICE Processing Center” and search destination field for “Los Angeles, CA.k”).

public transportation.⁵⁹ The location of the immigration court has been found to directly correlate to the ability to obtain representation, with “both detained and nondetained immigrants [being] less likely to obtain counsel when their case was decided in a small city.”⁶⁰ Detained noncitizens in cities with populations of less than 50,000 people are hit the hardest, having the lowest representation rate of only 10 percent.⁶¹ Detained immigrants are significantly more likely than non-detained immigrants to have their case heard in a small city, with 219,950 detained cases being heard in small cities compared to 4,476 of non-detained cases between 2007 and 2012.⁶²

There are also physical barriers to accessing information about the immigration process, which is needed to represent oneself. All detained immigrants are supposed to have access to a law library for at least five hours per week.⁶³ ICE explains that law libraries “often contain comprehensive legal materials . . . and are equipped with computers, printers, and photocopiers,” and should give detained immigrants the ability to “electronically store legal research and documents.”⁶⁴ ICE’s standards pronounce that detained immigrants who are illiterate or have limited English proficiency “must be provided assistance beyond access to a set of English-language law books.”⁶⁵ This includes, but is not limited to: “having the facility’s law librarian assist the detainee’s legal research”; “permitting the detainee to receive assistance from other detainees in using the law library”; or “assisting in contacting pro bono legal assistance organizations from the ICE/ERO provided list.”⁶⁶ However, these standards do not seem to guarantee translation for detained immigrants who do not speak English.

While five hours per week in the library seems like little time to get a grasp on complex immigration law and build one’s case, sometimes immigrants are not even granted that minimal amount of time. The denial of effective law library access produces additional physical barriers detained immigrants face as they are trying to represent themselves. In 2017, for example, the Southern Poverty Law Center (SPLC) wrote a complaint to ICE regarding the lack of access to the law library at the Folkston ICE Processing Center in Georgia.⁶⁷ In

59. See *Caroline Det. Facility*, U.S. IMMIGR. AND CUSTOMS ENF’T [<https://perma.cc/T3JP-3775>] (Driving Directions from Caroline Det. Facility to Washington, D.C., Google Maps (<http://maps.google.com>) follow “Directions” hyperlink; then search starting point field for “Caroline Detention Facility” and search destination field for “Washington, D.C.”).

60. Eagly & Shafer, *supra* n. 4, at 41.

61. *Id.*

62. *Id.*

63. U.S. IMMIGR. AND CUSTOMS ENF’T, LEGAL ACCESS IN DETENTION: AT A GLANCE, (Aug. 2021) [<https://perma.cc/SXB3-9BWL>].

64. *Id.*

65. U.S. IMMIGR. AND CUSTOMS ENF’T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS: RULE 6.3 LAW LIBRARIES AND LEGAL MATERIAL 426 (2016) [<https://perma.cc/457Q-Q35G>].

66. *Id.*

67. Letter from Eunice Cho, Staff Attorney, S. Poverty Law Ctr. & Ericka Curran, Clinical Professor, Fla. Coastal Sch. of Law, to Thomas Homan, Acting Dir., U.S. Immigr. and Customs Enf’t et. al. (Aug. 22, 2017) [<https://perma.cc/W22Y-B6U5>].

this letter, the SPLC alleges multiple violations of the standards for law libraries, including: no schedule indicating when the library is available for access; the library not even being available for the minimum of five hours a week; detained immigrants having to “choose between recreation time and time in the library”⁶⁸; and immigrants not being allowed to store their own research and documents on flash drives because detention officers had been taking the flash drives from the immigrants, which “allows officers to view potentially privileged computer files, and raises the risk that detainees may no longer have access to his electronic files if transferred or released.”⁶⁹ The response to this letter is not available online.

Another complaint letter alleges that the Desert View Annex Detention Facility in California did not provide effective access to a law library by only providing books from the 1990s, refusing to provide updated and more accessible materials, and not allowing enough access to the law library.⁷⁰

The Florence Immigrant & Refugee Rights Project in Arizona reported violations of law library access in two Arizona detention centers, Eloy Detention Center and Central Arizona Florence Correctional Center. These complaints included only having two working computers for 50–60 people and not being allowed to use the library during scheduled times.⁷¹ While some law library violations have been caught and complaints about those violations have been sent, it is unknown how many other detention centers have extremely restricted access to the law library given the ACLU’s ongoing litigation over the Freedom of Information Act (FOIA) request. This request seeks to uncover what law library materials are available at detention centers.⁷²

B. *Informational Barriers*

“With only a small degree of hyperbole, the immigration laws have been termed ‘second only to the Internal Revenue Code in complexity.’”

Former Ninth Circuit Judge John Noonan⁷³

Immigration law is incredibly complex. Second Circuit Judge José A. Cabranes described it as “a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners

68. ICE standards also explicitly prohibit detained immigrants having to “forego their minimum recreation time in order to use the law library,” *See*: PERFORMANCE-BASED NATIONAL DETENTION STANDARDS: RULE 6.3 LAW LIBRARIES AND LEGAL MATERIAL, *supra* n. 65, at 423.

69. Letter from Eunice Cho, *supra* n. 67.

70. Letter from Jayashri Srikantiah, Dir. Stan. L. Sch. Immigrants’ Rts. Clinic et. al. to Ombudsperson Brané, Off. of the Immigr. Det. Ombudsman (May 9, 2024) [<https://perma.cc/TA97-L8EE>].

71. FLORENCE IMMIGRANT & REFUGEE RTS. PROJECT, *Arizona Adult Immigration Detention Center Complaints: March 2024 – August 2024*, (Oct. 15, 2024) [<https://perma.cc/FG8D-FQW5>].

72. *ACLU Sues Seeking Records on Access to Legal Resources in ICE Detention*, ACLU (Jul. 11, 2023) [<https://perma.cc/4T6Y-EEAM>]. For more information on the ACLU’s ongoing litigation, *see infra* Section II.B.

73. *Castro-O’Ryan v. U.S. Dep’t of Immigr. & Naturalization*, 847 F.2d 1307, 1312 (9th Cir. 1988) (emphasis added).

alike.⁷⁷⁴ Noncitizens who do not have representation “are confronted with the need to master the intricacies of U.S. immigration and asylum statutes, regulations, and court precedents, along with court procedural requirements which are usually in English.”⁷⁷⁵ Given the severity of the following informational barriers and the lack of expertise immigrants have in this complicated area of law, self-representation is, in practice, essentially impossible in this area.

The inequities faced by pro se detained noncitizens begin long before the hearing itself—they start with having to know which applications to file and the deadlines to file them. This is especially difficult with the one-year deadline to file the Applications for Asylum and Withholding of Removal.⁷⁷⁶ Applicants claiming asylum must know they have a claim, be aware that this form must be filed, understand how to fill out the form themselves, and identify where it should be sent—all before the deadline of one year after they arrived in the U.S.⁷⁷⁷ If this deadline passes before the application is filed, there are exceptions—but the noncitizen must be aware of what constitutes an exception, and one does not know how strict the judge will be in finding an exception or not. As one author has stated, “[i]t is well established that few unrepresented asylum seekers can even complete and file their asylum application by themselves so they never even have an opportunity to have a hearing on their claims.”⁷⁷⁸ Knowing they have a viable defense claim against deportation is especially difficult for detained immigrants to obtain knowledge about, and representation can play a critical role in realizing those defenses. Not considering respondents whose cases were terminated, “32 percent of detained immigrants with lawyers apply for asylum or other legal protections from deportation, whereas only 3 percent of detainees without lawyers do the same.”⁷⁷⁹ Representation can be the difference between being able to do what the immigration system was meant to do—protect people who are fleeing persecution or have other viable statutory claims to stay in the U.S.—and automatic deportation.

Once somebody in deportation proceedings asserts their defense to deportation, they must find the applicable immigration statutes and parse through complicated Board of Immigration Appeals (BIA) and circuit court precedent. Language complicates matters even more. Going through immigration law precedent almost certainly requires fluency in English and an understanding of how American case law is written. As mentioned in the physical barriers section above,⁸⁰ while detention centers are supposed to make an effort to translate

74. *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003).

75. TRAC, TOO FEW IMMIGRATION ATTORNEYS: AVERAGE REPRESENTATION RATES FALL FROM 65% TO 30%, (Jan. 24, 2024) [<https://perma.cc/8WL3-F6MZ>].

76. 8 C.F.R. § 208.4.

77. *The One-Year Filing Deadline*, IMMIGR. EQUAL. [<https://perma.cc/98PP-RW6S>].

78. TOO FEW IMMIGRATION ATTORNEYS: AVERAGE REPRESENTATION RATES FALL FROM 65% TO 30%, *supra* n. 75.

79. Patrick G. Lee, *Immigrants in Detention Centers Are Often Hundreds of Miles from Legal Help*, PROPUBLICA (May 16, 2017) [<https://perma.cc/B6N7-3A4A>] (While it is unclear in the report what the other 68% of lawyers do, this number could be low because a portion of the other cases were terminated; *See: Access to Counsel in Immigration Court* Eagly & Shafer, *supra* n. 31, at 18).

80. *See supra* Section II.A.

all information in the law library, there is a lack of insight into whether this is actually happening or not. Not only does immigration law come with a massive amount of law to be aware of, but that law also comes with many complex exceptions, which all have their own elements to prove.⁸¹ How would a detained immigrant have the resources to know where to obtain forms to claim immigration relief and where exactly to file those? How would they know what counts as a “particular social group” for asylum claim purposes? How would they know they can apply for protection under the Convention Against Torture and Humanitarian Asylum if the immigration judge does not find their asylum claim to meet the statutory standard?

Another significant concern is whether the materials that self-represented detained immigrants have access to are even up to date. There is a lack of knowledge regarding the quality of materials in the detention center law libraries. In March 2023, the ACLU submitted a request under FOIA for “[e]lectronic Law Library materials provided at any Immigration Detention Facility,” “[a]ll supporting materials related to Electronic Law Library materials provided at or to any ICE Detention Facility,” and “[a]ny document related to software requirements for use of Electronic Law Library materials.”⁸² The ACLU submitted this FOIA request because “[l]egal materials provided in ICE detention facilities may be the only information that a detained immigrant may have for court hearings. For the more than 80 percent of detained people without counsel, the quality of these materials can determine the outcome of a case with life-or-death stakes.”⁸³ After not receiving an answer to the request, the ACLU sued ICE in July 2023 for the records to be released, and the litigation is still ongoing.⁸⁴ The lack of public disclosure regarding the library materials shows that it is not even known how reliable the very small amount of information detained immigrants can receive at the library is—further exacerbating the informational obstacles to self-representation.

Additional barriers arise when it comes time for immigrants representing themselves to submit documents for their court hearing. It is required by statute that any documents submitted to immigration courts be in English or accompanied by a certified English translation,⁸⁵ irrespective of whether the immigrant can even speak, read, or write in English.⁸⁶ Shana Tabak, a Georgetown University Law Center adjunct professor, explained that asylum court submissions consist of “at least 200 pages containing documentary evidence, affidavits, testimony, and expert opinions.”⁸⁷ Documentation that will be used

81. Michele R. Pistone, *The Crisis of Unrepresented Immigrants: Vastly Increasing the Number of Accredited Representatives Offers the Best Hope for Resolving It*, 92 *FORDHAM L. REV.* 893, 900–01 (2023).

82. E-mail from Marisol Dominguez-Ruiz, ACLU Nat’l Prison Project, to FOIA Off., U.S. Immigr. and Customs Enf’t and Senior Dir. of FOIA Operations, U.S. Dep’t of Homeland Sec. (Mar. 30, 2023) [<https://perma.cc/8F4M-R8MV>].

83. Press Release, ACLU, *ACLU Sues Seeking Records on Access to Legal Resources in ICE Detention*, (Jul. 11, 2023) [<https://perma.cc/4T6Y-EEAM>].

84. *Id.*

85. 8 C.F.R. §§ 1003.33, 1003.23(b)(1)(i).

86. Lee, *supra* n. 79.

87. *Id.*

in immigration court includes, but is not limited to, “police reports, hospital records, local news articles, supporting affidavits, and certificates of birth, marriage, or death.”⁸⁸ Locating much of this evidence requires a strong internet or phone connection, which detention centers often do not have.⁸⁹ Tabak remarked: “There’s no way a client who is detained and who does not have an attorney could put together that sort of evidence in order to advocate for him or herself and successfully win an asylum claim.”⁹⁰

Given this vast array of both physical and informational barriers to accessing justice, detained immigrants are usually left to represent themselves without being provided the tools to understand the complex immigration system. Law libraries are not a meaningful avenue to giving immigrants access to information to represent themselves, and language only complicates matters even more. Even when detained immigrants are fortunately able to find representation, they face a multitude of obstacles to even communicate with their lawyer. In practice, these barriers completely deny detained immigrants access to immigration relief.

III. Legal Interventions

Universal representation programs, accredited representatives, and the Legal Orientation Program are potential legal interventions that pose opportunities to help detained immigrants access justice. But all three interventions have limitations that indicate they cannot fix the access to justice problem on their own. Universal representation programs break down barriers to finding counsel and understanding immigration law, but there simply are not enough lawyers who are experts in the field to represent all the detained noncitizens across the U.S., especially in rural areas. This program is also not meaningful unless communication barriers in detention centers are addressed. Accredited representation is a powerful alternative that allows non-lawyers to represent detained immigrants, increasing the number of people who can help in the access to justice crisis. But this program has not yet scaled because it is under-resourced with burdensome requirements, and there is a lack of coalition building and research. Finally, the Legal Orientation Program is promising because it allows legal experts to physically enter detention centers, which is essential to breaking down physical and informational barriers. But this program does not provide individual legal representation at the rates necessary to help everyone in detention centers obtain the immigration relief they are entitled to. The sections below detail the opportunities and limitations of each intervention.

88. *The Case for Universal Representation*, VERA INST. OF JUST. [<https://perma.cc/56S2-KN9P>].

89. *Id.*

90. Lee, *supra* n. 79.

A. *Universal Representation for Detained Noncitizens*

Universal representation for detained immigrants is essentially “a public defender system for people facing deportation” that is federally funded.⁹¹ The ideal universal representation program would have no other eligibility criteria besides income and not already having a private lawyer.⁹² The ideal program would also be “merits-blind,” meaning that all clients are “represented without considering the likelihood that the case will have a ‘successful’ outcome in immigration court.”⁹³ Because universal representation means all immigrants are represented, this system “rejects false notions of deservedness and pre-judgment of an immigrant’s case and honors the community demand that no immigrant face detention or deportation alone.”⁹⁴ While universal representation opens up many doors to accessing justice, it is not without its limitations, including existing communication barriers in detention facilities and a concern about having enough lawyers to partake in universal representation programs.

Universal representation programs address physical barriers to access to justice, such as not having to try to find counsel in an isolated location, with the limited resources offered inside the detention center, and it eliminates financial impediments by providing a government-funded attorney. This program also breaks down informational barriers as the representatives are there to explain the complexities of immigration law, identify what forms need to be filed, detect what defenses to deportation exist, work to compile the necessary evidence and documentation for the hearing, and be there at the hearing itself.

1. **Opportunities**

One of the primary ways the universal representation model moves the needle for detained immigrants to have access to justice is that the most vulnerable people—often those whom immigration attorneys would not represent due to a past interaction with the criminal justice system or because their case does not, on its face, seem to have a high likelihood of success—are represented.⁹⁵ Universal representation also means that detained noncitizens who would not otherwise know they have a viable defense to deportation actually are able to exercise their rights and bring that claim to immigration court.⁹⁶ Universal representation programs also promote access to justice through increasing efficiency given that lawyers “play a vital role in alleviating a variety of administrative delays and facilitating a more functional legal process.”⁹⁷ An immigration judge’s docket runs smoother as they are not taking time to explain rights and how proceedings will run to noncitizens, given that the attorney already provides that information.⁹⁸ Because these programs would be

91. *The Case for Universal Representation*, *supra* n. 88.

92. *Id.*

93. *Id.*

94. *A Federal Defender Service for Immigrants: Why We Need a Universal, Zealous, and Person-Centered Model*, Vera Inst. of Just., 2 (2021) [<https://perma.cc/DQ26-872V>].

95. *The Case for Universal Representation*, *supra* n. 88.

96. See Lee, *supra* n. 79.

97. TRAC, *supra* n. 75.

98. JENNIFER STAVE ET AL., EVALUATION OF THE NEW YORK IMMIGRANT FAMILY UNITY PROJECT:

implemented in all jurisdictions where ICE detention centers exist, universal representation mitigates the access to representation issues that are rooted in detention location.⁹⁹ What makes this pathway seem even more conceivable is that sixty-seven percent of people in the United States “support government-funded attorneys for people facing deportation.”¹⁰⁰ This means that getting public opinion to be in favor of universal representation is not a barrier to implementing the program.

New York is the first state in the United States to implement a public universal representation program for immigrants in deportation proceedings through its New York Immigrant Family Unity Project (NYIFUP).¹⁰¹ The program grew out of a study group organized by Judge Robert Katzmann.¹⁰² NYIFUP started as a pilot program in 2013 before gaining full funding in 2014.¹⁰³ This study group created a New York representation study, which was conducted in 2011, and found that “unrepresented detained immigrants had only a three percent chance of succeeding in their removal proceedings.”¹⁰⁴ NYIFUP engages three different organizations that actually provide the representation: the Bronx Defenders, Brooklyn Defender Services, and the Legal Aid Society.¹⁰⁵ This program has been immensely successful for detained immigrants as there is a “1,100 percent increase from the observed four percent success rate for unrepresented cases at Varick Street [Immigration Court]” than before the program was implemented.¹⁰⁶ When the 2017 Vera Institute report was written, NYIFUP had an overall success rate of forty-eight percent—meaning “legal relief, termination, or administrative closure” was given.¹⁰⁷ Most importantly, the people that NYIFUP serves feel supported by their representatives and like they actually have a fair chance in the immigration process. Martin, a former NYIFUP client, explained:

If I wasn’t provided a lawyer, I couldn’t stand a chance. I didn’t know the law. Everybody in court needs a lawyer. To go in front of the court system without a lawyer, that’s like suicide, because the government counsel, they know the law They know the cases . . . they know the rules, they have the experience—I don’t. They know how to fight it, so there’s no way I could win the case.¹⁰⁸

Immigration proceedings do not always end after trial as noncitizens may appeal to the Board of Immigration Appeals (BIA) if they do not win a

ASSESSING THE IMPACT OF LEGAL REPRESENTATION ON FAMILY AND COMMUNITY UNITY, VERA INST. OF JUST., 35 (2017) [<https://perma.cc/56QM-9NPA>].

99. See: *Where You Live Impacts Ability to Obtain Representation in Immigration Court*, TRAC (Aug. 7, 2017) [<https://perma.cc/G2YK-4N9Q>].

100. *The Movement for Deportation Defense: Information Hub*, VERA INST. OF JUST. [<https://perma.cc/7NY7-9XVE>].

101. Stave et al., *supra* n. 98, at 7.

102. *Id.* at 10.

103. Sidahmed, *supra* n. 1.

104. J STAVE ET AL., *supra* n. 98, at 10.

105. *Id.* at 11.

106. *Id.* at 6, 24–25.

107. *Id.* at 6, 24.

108. *Id.* at 22.

favorable outcome, and then, if they lose at the BIA level, to a federal circuit court.¹⁰⁹ NYIFUP also assists their clients with these proceedings.¹¹⁰ NYIFUP cases filed an appeal at higher rates than national rates for unrepresented cases—ten percent compared to only three percent.¹¹¹ For cases that were appealed, NYIFUP obtained favorable outcomes in fourteen percent of their cases, considerably higher than the national average of five percent.¹¹² The NYIFUP program has shown that publicly funded public defense programs for immigrants can successfully operate. When NYIFUP clients were asked about their representation, “[t]hey recognized that access to lawyers was just one part of bringing fairness to a process that is stacked against them. However, their testimonies affirm that representation is critical to mitigating the harm caused by immigration enforcement and detention that routinely upends peoples’ lives and destabilizes communities.”¹¹³

2. Limitations

Universal representation programs are not without their flaws. A major limitation of universal representation programs is that it can be rendered meaningless if the communication barriers faced by clients and their counsel are not addressed. As mentioned in Part II of this Article, even once detained immigrants have a lawyer, the detention facilities impose a host of communication barriers between the client and the lawyer that can make it difficult to meet in person or speak over the phone.¹¹⁴ If universal representation programs will actually lead to maximal access to justice for detained immigrants, ICE and those they contract with for detention facilities must ensure that communication barriers are eliminated.

Another limitation is finding enough lawyers in every jurisdiction to engage in this work. One of the primary reasons why so few immigrants are represented is the lack of attorneys available to take on the work, especially given the rising demand.¹¹⁵ A 2022 study found that there is “one legal professional working for a charitable immigration program for every 1,413 undocumented persons in the United States.”¹¹⁶ This issue of not having enough representatives is even more pronounced in certain states, such as Alabama, which has only one legal professional per 6,656 undocumented persons, and New Jersey, which has one legal professional per 2,687 undocumented persons.¹¹⁷ Because of this, representation programs would realistically not

109. See: *The Removal System of the United States: An Overview*, AM. IMMIGR. COUNCIL (Aug. 9, 2022) [<https://perma.cc/8SVV-ALXD>].

110. See STAVE ET AL., *supra* n. 98, at 36.

111. *Id.*

112. *Id.* at 37.

113. IN THEIR OWN WORDS: LEARNING FROM NYIFUP CLIENTS ABOUT THE VALUE OF REPRESENTATION, VERA INST. OF JUST., 5 (2022) [<https://perma.cc/3DKG-RFYA>].

114. See discussion, *supra* Section II.A.

115. TRAC, *supra* n. 75.

116. 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 AND HUM. SEC. 190, 191 (2022).

117. *Id.* at 192.

be universal and would have to target narrower populations in detention centers—focusing on cases that are more likely to win or only representing the most vulnerable populations.

B. *Accredited Representatives*

Accredited representatives are non-lawyers who are able to aid non-citizens on a breadth of legal issues they encounter in the U.S. immigration system.¹¹⁸ Accredited representatives are authorized under 8 C.F.R. § 292.1.¹¹⁹ There are partial and fully accredited representatives; these classifications determine the capacities representatives can assist noncitizens in. Partially accredited representatives can only represent clients before the Department of Homeland Security (DHS), meaning they mostly help with filing applications and petitions, including affirmative applications for asylum.¹²⁰ Fully accredited representatives can, in addition to representing clients before DHS, also represent clients before immigration courts and the BIA, meaning they can represent clients in defensive removal proceedings.¹²¹ Fully accredited representatives can essentially act as lawyers in these proceedings, as they “sit at the counsel table, speak to the judge, sign legal documents and applications, file pleadings, offer evidence, conduct direct examinations, deliver opening statements and closing arguments, and make objections to evidence during cross examination, all on their own.”¹²² There are currently fewer than 2,300 accredited representatives across the entire country.¹²³ Accredited representatives must work at a non-profit that is recognized and accredited by the Executive Office of Immigration Review (EOIR), and there are currently about 850 of these qualified organizations.¹²⁴

In order to become an accredited representative, one must “ha[ve] the character and fitness to represent clients before the immigration courts and the Board, or DHS, or before all three authorities,” and must “possess[] broad knowledge and adequate experience in immigration law and procedure.”¹²⁵ To receive full accreditation, “the individual [must] also possess[] skills essential for effective litigation.”¹²⁶ While these statutory guidelines are vague, training programs have been developed that satisfy these requirements.¹²⁷

118. See 8 C.F.R. § 292.1(a)(4) (2011).

119. *Id.*

120. 8 C.F.R. § 1292.12(a) (2017); see also Benjamin, *supra* n. 9, at 273–74 (discussing the qualifications and limitations of partially accredited representatives).

121. 8 C.F.R. § 1292.12(a) (2017); see also Benjamin, *supra* n. 9, at 273–74 (specifying how a fully accredited representative is “most akin to an attorney”).

122. Pistone, *supra* note 81, at 912.

123. *Id.* at 913 (citing *Recognized Organizations and Accredited Representatives Roster*, U.S. DEP’T JUST. (Aug. 28, 2023) [<https://perma.cc/V5QM-6E9B>]).

124. *Recognition and Accreditation Program: Frequently Asked Questions*, EXEC. OFF. FOR IMMIGR. REV. [<https://perma.cc/Y27K-YAXM>].

125. 8 C.F.R. § 1292.12(a) (2017).

126. *Id.*

127. See *VIIISTA: Villanova Interdisciplinary Immigration Studies Training for Advocates*, VILLANOVA UNIV. [<https://perma.cc/6JXQ-WJNF>] (last visited Mar. 21, 2025); *Information About CLINIC Training for DOJ Recognition and Accreditation*, CATH. LEGAL IMMIGR. NETWORK [<https://perma.cc/CT5Q-AK5K>] (last visited Mar. 21, 2025).

The main way accredited representatives can begin to break down barriers to access to justice is by simply being additional people who can represent detained noncitizens, especially given that the demand for representation is so high. However, accredited representatives face the same communication barriers as attorneys in detention centers when they try to get a hold of their clients, which can severely limit their ability to understand their clients' claims and effectively advocate for them in court.¹²⁸ Accredited representatives can help clients understand their immigration claims, offer potential defenses that will help the client stay in the U.S., and help put together a compelling document submission for court. Their assistance includes explaining the complexities of immigration law, identifying what forms need to be filed, detecting what defenses to deportation exist, working to compile the necessary evidence and documentation for the hearing, and being there at the hearing itself.

However, which barriers the representative can break down depends on what kind of accreditation they have, either partial or full. Partially accredited representatives cannot represent clients in defensive removal proceedings, which is the type of proceeding that detained immigrants are in. Additionally, the low number of accredited representatives across the country indicates that this program is not operating optimally and has failed to scale. Potential reasons for this failure to scale may be that requirements for accreditation are burdensome, the office that runs the Recognition & Accreditation Program is under-resourced, recognized organizations are hesitant to provide deportation defense, and there is a need for larger-scale changes in the legal field that recognize the need for accredited representatives and encourage the expansion of the program.¹²⁹

1. Opportunities

Growing the number of accredited representatives can help alleviate the access to justice problem for incarcerated immigrants. History has shown that relying on lawyers alone has not solved the immigration representation crisis.¹³⁰ The Director of Programs at the International Institute of the Bay Area, Sheryl Muñoz-Bergman, remarked, “[t]he fact that we can identify individuals who are from the communities that we’re serving and then provide them the training to be an accredited representative is very powerful.”¹³¹ In this way, accredited representatives are more likely to be culturally competent and have the necessary language skills if they come from the communities they represent.¹³²

128. See discussion, *supra* Section II.A (elaborating on communication barriers).

129. See discussion, *infra* Section III.B.2.

130. See Pistone, *supra* note 81, at 905–09 (identifying the shortcomings of lawyer pro bono programs, which have failed to address the demand of immigrant representation).

131. Benjamin, *supra* note 9, at 292 (citing Telephone Interview with Sheryl Muñoz-Bergman, Dir. of Programs, Int’l Inst. of the Bay Area in Redwood City (May 19, 2017)).

132. See Pistone, *supra* note 81, at 916.

In 2010, a federal district court found that accredited representatives are competent to represent immigrants in proceedings.¹³³ Subsequent data confirms this as well. The EOIR's data from 2010 to August 2020 reveals that "accredited representatives provided representation in 7,799 removal cases," with "[f]ifty-one percent (51%) of those decisions result[ing] either in a termination order (2,251 cases) or in the court granting relief (943 cases)."¹³⁴ Although there may be misconceptions that a legal degree is necessary to adequately represent immigrants in their proceedings, many law students themselves do not receive education specific to immigration law before they go into the field.¹³⁵ Before gaining accreditation, representatives are specifically trained to do what is necessary to be an effective advocate: "providing trauma-informed client interviewing and counseling, conducting intake interviews to determine eligibility for immigration benefits or relief, understanding cross-cultural differences, working with interpreters and expert witnesses, and conducting research about conditions in foreign countries."¹³⁶

The requirements to become an accredited representative are much less burdensome than attending law school in order to practice immigration law. While law school completion and bar admittance take approximately three-and-a-half years, the Villanova Interdisciplinary Immigration Studies Training for Advocates (VIISTA), for example, takes twenty-eight weeks to become partially accredited and forty-two weeks to become fully accredited.¹³⁷ Accreditation is also much more accessible than law school in terms of cost and flexibility. The program at Villanova is "offered as online, asynchronous programs, maximizing the ability of students who work full time or have extensive family commitments to complete the educational program."¹³⁸ The cost for full accreditation at Villanova is \$3,900,¹³⁹ "which is about 9.3 percent of the median cost of attending law school."¹⁴⁰ This low cost for education and training sets accredited representatives up to be able to serve people who need it the most. As one author contends, "without the need to earn high salaries that would allow them to pay back law school debt, accredited representatives are better situated to provide low-cost legal representation to indigent immigrants."¹⁴¹

133. *Franco-Gonzales v. Holder*, 828 F. Supp. 2d 1133, 1146–47 (C.D. Cal. 2011); see also Erin B. Corcoran, *Bypassing Civil Gideon: A Legislative Proposal to Address the Rising Costs and Unmet Legal Needs of Unrepresented Immigrants*, 115 W. VA. L. REV. 643, 673–75 (2012).

134. Pistone, *supra* n. 81, at 913 (citing CATH. LEGAL IMMIGR. NETWORK, INC., KEY TAKEAWAYS FROM FREEDOM OF INFORMATION ACT REQUEST ON OFFICE OF LEGAL ACCESS PROGRAMS (OLAP) AND THE RECOGNITION AND ACCREDITATION PROGRAM 5 (2021) [<https://perma.cc/624J-VLLA>]).

135. *See id.* at 914.

136. *Id.*

137. *Id.* at 915.

138. *Id.*

139. *VIISTA Program Details*, VILLANOVA UNIV. [<https://perma.cc/UXK5-PUU8>].

140. Pistone, *supra* n. 81, at 915.

141. *Id.*

2. Limitations

One current significant limitation is the very small number of accredited representatives. Considering this is a program that has been around since the 1950s,¹⁴² the fact that there are still fewer than 2,300 accredited representatives in the entire U.S.¹⁴³ indicates this program is not functioning optimally. There is particularly a lack of fully accredited representatives who can represent clients before immigration courts and the BIA, meaning they can represent clients who have been given a notice to appear in immigration court for deportation proceedings.¹⁴⁴ Currently, only 277, or about 14 percent of all accredited representatives, are fully accredited.¹⁴⁵ Given that there are considerably more partially accredited representatives than fully accredited ones, another way to support detained immigrants is to allow partially accredited people to represent clients in court “for limited functions.”¹⁴⁶ This would include representing clients at hearings that are lower-stakes than the actual merits hearing where the immigrant asserts their deportation defense—such as “bond and master calendar hearings, and for seeking continuances.”¹⁴⁷ This could give fully accredited representatives more time to work on preparing for the merits hearing.

One potential reason why the accredited representative system is not currently optimal is that the requirements are burdensome. In order for an accredited representative to work at a nonprofit, not only does the representative have to get accreditation, but so does the organization itself. Not all “charitable immigration legal programs” decide to go through the recognition and accreditation process to allow accredited representatives to work at their organizations.¹⁴⁸ This may impact an individual’s decision to become an accredited representative depending on whether the organization they want to work for is accredited or whether there even is an organization nearby that is accredited. Additionally, if an accredited representative decides they want to move to another organization, “the new organization must apply anew for [Department of Justice] recognition and accreditation for the individual.”¹⁴⁹ Even if an accredited representative does not change organizations, they must apply for accreditation renewal every three years.¹⁵⁰ The program makes it difficult for the number of accredited representatives to grow given the hoops they have to jump through.

Moreover, the Recognition and Accreditation Program, which is housed under the Department of Justice in the Office of Legal Access Programs (OLAP), has proved itself to be “severely underfunded and under-resourced,”

142. *Id.* at 909.

143. *Id.* at 913.

144. As compared to immigrants who have not been given a notice to appear for deportation proceedings and are affirmatively seeking asylum in the USCIS asylum office.

145. Kerwin & Millet, *supra* n. 116, at 191.

146. MUZAFFAR CHISHTI, ET. AL., AT THE BREAKING POINT: RETHINKING THE U.S. IMMIGRATION COURT SYSTEM, MIGRATION POL’Y INST., 42 (2023).

147. *Id.*

148. Kerwin & Millet, *supra* n. 116, at 193.

149. Pistone, *supra* n. 81, at 913.

150. *Recognition and Accreditation Program: Frequently Asked Questions*, *supra* n. 124.

affecting how representatives move through the accreditation process.¹⁵¹ In the past, accreditation processing times were three to four months, but have since increased to fifteen to seventeen months.¹⁵² Advocates credit this hefty processing backlog mainly to OLAP being “severely underfunded and understaffed.”¹⁵³ In 2021, OLAP only had “one adjudicating attorney and two legal assistants to adjudicate a massive backlog of 679 pending accreditation applicants and 218 pending recognition applications.”¹⁵⁴ Staffing concerns also include a high turnover rate in OLAP, making the office “lose[] institutional knowledge, and frequently need [to] train new employees.”¹⁵⁵ If the number of accredited representatives were to increase, the recognition and accreditation program must be sufficiently staffed and funded to support a higher number of applications and encourage more people to train for this profession.

Another limitation is that because of “more limited resources, the high percentage of partially accredited representatives, and their cautious approach, recognized organizations often do not provide removal defense.”¹⁵⁶ Muñoz-Bergman explained that her organization is “‘very cautious’ when determining whether a[n accredited representative] is ready to start taking cases, and it commonly takes a year or more before anyone handles a case of their own,” while lawyers tend to learn quicker and “more quickly jump into complex cases.”¹⁵⁷ While Muñoz-Bergman did not explain why this is the case, one could assume that lawyers have more experience with dealing with complex legal issues through three years of a more holistic legal training.¹⁵⁸ Overall, though, this sentiment seems to stem from wanting to provide as high a quality of representation as possible.¹⁵⁹ While gaining more experience might just be a necessary process to go through before being able to handle deportation defense, perhaps the training programs can be more rigorous in giving more hands-on experiences with complex cases or requiring students to shadow deportation defense attorneys before gaining accreditation.

Taking a step back, Michele Pistone, the “creator and founding faculty director” of Villanova’s accreditation training program,¹⁶⁰ suggests that larger-scale changes in how accredited representation is supported as a profession could encourage more people to pursue this career path.¹⁶¹ One of her recom-

151. KAREN SULLIVAN, CLINIC POLICY BRIEF: THE SEVERELY UNDER-RESOURCES R&A PROGRAM IS AN ESSENTIAL TOOL TO MEET GROWING NEEDS FOR AFFORDABLE IMMIGRATION LEGAL SERVICES, 3 (2021).

152. *Id.* at 6.

153. *Id.*

154. *Id.* at 7.

155. *Id.*

156. Benjamin, *supra* n. 9, at 301.

157. *Id.* at 291–292.

158. While accredited representatives receive training that is much more targeted towards immigration law than many immigration lawyers may receive during law school, there are a lot of more holistic critical legal skills that law students learn that may help them more quickly grasp complex issues.

159. Benjamin, *supra* n. 9, at 302.

160. Pistone, *supra* n. 81, at 893.

161. *See Id.* at 927.

mentations is obtaining more funding for accredited representative education and training.¹⁶² When seeking funding, “[i]ndividual NGOs, universities and others who might strategically utilize funding will need to make the case to these funders that the funding they would make available to enhance immigration representation efforts would be most effective if directed toward developing the field of accredited representatives.”¹⁶³ Further, Pistone emphasizes coalition building and creating networks, noting that “there is probably no task more important for the success of the incipient accredited representative movement than for it to build coalitions united behind the idea that accredited representatives can play a huge role in addressing access to justice in immigration.”¹⁶⁴ This is because coalition building “help[s] with fundraising, with obtaining favorable government action, and with finding support for and coordinating research.”¹⁶⁵ All of this coalition building would eventually lead to a professional association, which would help “accredited representatives be able to share best practices, facilitate professional development opportunities, and create mechanisms for the exchange of knowledge,” as well as help accredited representatives raise awareness of their vital work.¹⁶⁶

Another aspect of coalition building is focusing on funding recruitment from communities that have the cultural competency to help incoming immigrants. For example, the American Bar Association (ABA) gave Afghani immigrants scholarships to attend VIISTA, which was a “key part of [the ABA’s] strategy to respond to the unique legal needs of the Afghan citizens who were evacuated to the United States after the fall of Kabul.”¹⁶⁷ Coalition partners can use funding intentionally, such as the ABA did, to encourage diverse communities to obtain accreditation through no cost to themselves, which will in turn enable them to provide competent representation to incoming immigrants.

Pistone also emphasizes the need for additional research on accredited representation. There is simply not enough research being done on the impact of accredited representation on immigration backlogs, what effective recognized organizations do to support accredited representatives, and how accredited representative positions are funded.¹⁶⁸ Hesitancy to become a recognized organization or an accredited representative could stem from a lack of knowledge about the field, and additional research could help address this limitation.

C. *The Legal Orientation Program (LOP)*

The Legal Orientation Program (LOP), funded by the Department of Justice’s Executive Office for Immigration Review (EOIR), enlists nonprofit immigration organizations to go to ICE detention facilities to provide four

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 930–31.

167. *Id.* at 930.

168. *See Id.* at 932–33.

services: group orientations, individual orientations, self-help workshops, and referral to pro bono legal services.¹⁶⁹ The LOP also provides a free information line, which is available to all ICE detention facilities that hold individuals in their custody for over seventy-two hours.¹⁷⁰ The Vera Institute of Justice administers LOP, and it has operations in forty-three detention facilities across the U.S.¹⁷¹ Every year, the LOP gives about 400 Know Your Rights presentations, 4,000 individual orientations, 200 pro se workshops, and 2,000 intake interviews.¹⁷²

The LOP addresses a multitude of physical barriers to access to justice as representatives from the nonprofit physically come to the detention center for some of their services. While communication barriers can still exist in follow-up conversations over the phone, the LOP ensures that there is designated face-to-face time in which detained immigrants are speaking with someone who is there to offer support and guidance through the immigration process. The LOP also begins to chip away at informational barriers by giving general presentations about the immigration process and providing one-on-one consultations. While individual orientations do not amount to legal representation, they can still empower immigrants with tools to understand how to advocate for themselves. The LOP can also sometimes lead to attorney referrals.

1. Opportunities

LOPs are vital to filling the gaps in representation in immigration detention facilities.¹⁷³ Through LOPs, “non-profit organizations reach a wider audience of people with minimal resources.”¹⁷⁴ An important part of access to justice is being able to move efficiently through the legal system and obtain the relief one is entitled to. The Vera Institute has found that LOP cases were completed at higher rates, completed in fewer average days, “more likely to complete at the initial [master calendar hearing],” and “significantly more likely to complete on any given day in court” than non-LOP cases.¹⁷⁵ Detention facility staff also noted that LOP “makes detention ‘safer’ and ‘more humane’” given that it tends to reduce “behavior problems.”¹⁷⁶ Immigration judges are

169. EXEC. OFF. FOR IMMIGR. REV., U.S. DEP’T OF JUSTICE, LEGAL ORIENTATION PROGRAM [<https://perma.cc/JJB3-ZS7X>].

170. *See Id.*

171. Bettina Rodriguez Schlegel, VERA INST. OF JUST., LEGAL ORIENTATION PROGRAM, VERA INST. OF JUST. [<https://perma.cc/4UYW-V894>].

172. *See* AMICA CENTER FOR IMMIGRANT RIGHTS, DETAINED ADULT PROGRAM [<https://perma.cc/6LBU-7UMV>].

173. *See Id.*

174. Maria Sacchetti, *Justice Dept. to Halt Legal-Advice Program for Immigrants in Detention*, WASH. POST (Apr. 10, 2018), (https://www.washingtonpost.com/local/immigration/justice-dept-to-halt-legal-advice-program-for-immigrants-in-detention/2018/04/10/40b668aa-3cfc-11e8-974f-aacd97698cef_story.html).

175. Memorandum from Nina Siulc, Vera Inst. of Just., to Steven Lang, EOIR, “Update on Performance Indicators: LOP Case Time Analysis” (April 1, 2018).

176. NINA SIULC, ET. AL., LEGAL ORIENTATION PROGRAM: EVALUATION AND PERFORMANCE AND OUTCOME MEASUREMENT REPORT, PHASE II, VERA INST. OF JUST 66–67 (2008) (While “behavior problems” are not defined, the report notes that the LOP has reduced “the number of violent disturbances and even the use of segregation.”).

in favor of the program because LOP “participants are more prepared for court proceedings” and “better prepared to identify the relief for which they may be eligible, allowing them to avoid wasting their time and the court’s time by pursuing relief for which they are ineligible.”¹⁷⁷

While the LOP does not itself provide direct representation, both group and individual orientations can make a significant difference from no assistance at all, as the program “empowers detained immigrants to understand their rights and navigate a complex legal system.”¹⁷⁸ During the group orientations, “lawyers and others hold hour-long group information sessions with detainees to explain their rights, how the court process works[,] and their possible defenses to deportation in federal law, such as seeking asylum if they are in fear for their lives.”¹⁷⁹ These orientations can be recorded, and are typically provided in English and Spanish and can be presented in other common languages—at least beginning to minimize language barriers.¹⁸⁰ Individual orientations can also be very helpful in providing useful information and work product to use in the hearings. For example, the Amica Center for Immigrant Rights uses their LOP to “review individual cases and determine the next course of action for each case, such as a pro bono referral or a follow-up.”¹⁸¹ When assisting pro se detained immigrants, “they contact clients’ family members for declarations, translate documents, and/or conduct research on country conditions, for pro se people to use in their immigration cases.”¹⁸² Additionally, referrals to attorneys can be especially helpful when people are detained and unable to easily access the contact information of different lawyers who are available to help them.¹⁸³ The access to justice gap can be somewhat narrowed through this program as the LOP administrators help provide resources necessary for immigration proceedings.

2. Limitations

LOP is currently only offered in forty-three detention centers across the U.S. This number is extremely low compared to the over 200 immigration detention centers across the country.¹⁸⁴ Additionally, there are many restrictions on what resources the LOP can offer. Most notably, detained noncitizens do not actually get representation through the LOP. While the LOP does give referrals to lawyers, these referrals are not always successful¹⁸⁵ and detained noncitizens can face referral fatigue. The most recent data on LOP referrals is from 2006.¹⁸⁶ It is published in a 2008 Vera Institute of Justice report, which,

177. AM. IMMIGR. COUNCIL, LEGAL ORIENTATION PROGRAM OVERVIEW 3 (2018) [<https://perma.cc/LE3C-YY4L>].

178. Schlegel, *supra* n. 171.

179. Sacchetti, *supra* n. 174.

180. SIJLC, ET AL., *supra* n. 176, at 20–22.

181. AMICA CENTER FOR IMMIGRANT RIGHTS, *supra* n. 172.

182. *See Id.*

183. AM. IMMIGR. COUNCIL, *supra* n. 177, at 2.

184. DETENTION BY THE NUMBERS, FREEDOM FOR IMMIGRANTS) [<https://perma.cc/ALY8-GNCC>].

185. SIJLC, ET AL., *supra* n. 176, at 69.

186. *Id.* at 29.

albeit outdated, does provide some guidance.¹⁸⁷ In 2006, only 257 referrals were made, which is “approximately four referrals per site [13 total] each month over the course of the year,” and not all of those referrals were successful.¹⁸⁸ However, the report does note that this number, while small, also reflects that “very few detained persons (less than 20 percent in our analysis) pursue forms of relief other than voluntary departure.”¹⁸⁹ While research on the LOP does not indicate why the referral number is so low, it could be because detained cases are generally more difficult to win, especially when the immigrant has a criminal record, and attorneys do not want to spend time on cases that they do not think will be successful. Additionally, given that detained immigrants typically cannot pay their counsel, the pool of attorneys is limited to those willing to provide pro bono resources.

While individual orientations can be helpful to detained immigrants, finding time to actually conduct them may be a struggle for non-profit organizations.¹⁹⁰ An organization may need enough people to simultaneously run the group orientations and individual orientations at the same time to not “interfere with detention center censuses (or ‘counts’) or meals.”¹⁹¹ Additionally, while individual orientations are meant to provide more specific information to each person, the LOP administrators still cannot give legal advice—which is different from giving “general legal information.”¹⁹² Immigration Judge Noel Brennan explained his perception of the limitations of the LOP:

Let it be said that one-on-one consultations are a vast improvement over generalized presentations that are sometimes offered as part of an orientation to newly detained respondents. Let it also be said that even these generalized presentations are a lot better than no help at all. However, even one-on-one consultations have limitations. For someone from another culture, another legal system, who does not speak English well, if at all, and who may have little education, the help offered here, precious though it may be, needs reinforcement. Indeed, I have seen experienced attorneys—and judges—struggle with aspects of the law. The one-on-one consultation is, for sure, of great value in a situation in which there is otherwise no help, but its existence must not be allowed to obscure the larger predicament of detained respondents or allay our qualms in this regard.¹⁹³

Thus, while the LOP can be critical in filling the existing gaps in access to justice, it cannot be considered a complete replacement for providing direct representation.

Another weakness of the LOP is that it is subject to the volition of the administration that is in power. The LOP was initiated by President George W. Bush in 2003 and received bipartisan support in Congress.¹⁹⁴ However,

187. *Id.*

188. *Id.* at 69.

189. *Id.* at 29.

190. *Id.* at 22.

191. *Id.*

192. *Id.*

193. Noel Brennan, *A View From the Immigration Bench*, 78 *FORDHAM L. REV.* 623, 629 (2009).

194. American Immigration Council Staff, *The Justice Department Is Halting Its Legal*

under the Trump administration in 2018, the EOIR announced it would be ending the LOP while it conducted audits on the “program’s cost-effectiveness.”¹⁹⁵ Immigrant advocates found this to be a political move to strip away immigrants’ rights.¹⁹⁶ Ultimately, after pushback from Congress and many immigration advocacy organizations, the EOIR decided against pausing the program.¹⁹⁷ However, congressional “[s]essions did not rule out attempting to end LOP in the future.”¹⁹⁸ And President Trump has already targeted the LOP in his second term.¹⁹⁹ On January 22, 2025, the DOJ issued a stop work order to the LOP, among other programs meant to help noncitizens through the immigration process, and ceased funding to the program.²⁰⁰ In response, various immigrant rights nonprofits filed a complaint in the U.S. District Court for D.C. on January 31, 2025, against the DOJ, EOIR, and DHS, along with the Acting Attorney General, Acting Director of EOIR, and Secretary of Homeland Security.²⁰¹ Two days after this complaint was lodged in court, the DOJ reversed its stop work order and reinstated funding to the programs.²⁰² While the LOP is safe for now, there is no predicting whether it will survive this Administration.

One of the most important limitations of the LOP is that there is a sparse amount of research on how the LOP operates and its effectiveness. The last time the Vera Institute did a full published report of the LOP was in April 2008.²⁰³ The immigration landscape has changed drastically in seventeen years. There is much information missing in current research about the LOP, such as how detention centers are picked for the program and what the make-up is of advocates who run the programs—whether they are attorneys, accredited representatives, or volunteers without any legal background. More recent research and data would help advocates better understand whether the LOP is still useful in today’s immigration system and, if it is, what the best ways to expand it would be.

Advice Program for Detained Immigrants, IMMIGR. IMPACT (Apr. 11, 2018) [<https://perma.cc/9QZ8-US7L>].

195. Sacchetti, *supra* n. 174.

196. *ACLU Comment on Justice Department Notice to Halt Legal Orientation Program for Immigrants*, AM. CIV. LIBERTIES UNION (Apr. 10, 2018) [<https://perma.cc/4JT3-5EPT>].

197. Joshua Breisblatt, *Justice Department Will Not Halt Legal Orientation Program for Detained Immigrants, Reversing Course for Now*, IMMIGR. IMPACT (Apr. 25, 2018) [<https://perma.cc/A67W-4G6U>].

198. *Id.*

199. Kate Brumback, *Justice Department Restores Funding for Programs that Provide Guidance in Immigration Courts*, AP NEWS (Feb. 3, 2025) [<https://perma.cc/X6JT-46EQ>].

200. Complaint at 5, *Amica Ctr. for Immigrant Rts. v. U.S. Dep’t of Just.*, 1:25-cv-00298 (D. D.C. Jan. 31, 2025).

201. *Id.* at 13–14.

202. Brumback, *supra* n. 199.

203. SIULC, ET. AL, *supra* note 176.

IV. Recommendations for the Future: Optimizing the Use of Universal Representation, Accredited Representatives & the LOP

While all three of these offered legal interventions have opportunities to address the access to justice gap for detained noncitizens, none of them on their own is optimal.²⁰⁴ However, maybe not one of these legal interventions alone is the answer, but all three of them, working together, can provide the most access to justice. Universal representation programs, which include both attorneys and accredited representatives, is the ideal solution. Because universal representation programs cannot be established overnight, the LOP should continue to operate until universal representation programs get off the ground.

Universal representation programs seem to provide the highest levels of actual success in giving detained noncitizens more of an equitable footing in seeking immigration relief.²⁰⁵ Providing every immigrant a representative in deportation cases should be the ideal, given that “an order of deportation can, in effect, be a death sentence.”²⁰⁶ However, limitations of universal representation do exist.²⁰⁷ It is important to emphasize that universal representation programs seem to work best in cities and areas with lawyers who have significant expertise in deportation defense, such as New York. It may be difficult to establish these programs in rural, remote areas, where representatives would have to travel far to meet with their clients. This problem could be addressed by encouraging people who live in these remote areas to become accredited representatives and serve these rural communities. This encouragement can come from additional funding for training programs, building a stronger network for the accredited representative profession, and granting scholarships to people from rural areas to pursue accreditation.

Additionally, universal representation programs are devoid of meaning if communication barriers are not addressed.²⁰⁸ This is a sentiment that is true for both lawyers and accredited representatives who are seeking to provide legal help in detention centers. This means, in order for universal representation programs to be effective, DHS must change how they operate their phone lines and in-person visits with lawyers to allow for more access into detention centers and to be more consistent, as not all scheduled phone calls or visits are honored.²⁰⁹ To ensure DHS complies, Congress must strengthen its oversight of ICE’s communication access violations.²¹⁰

Another limitation of universal representation programs is the ability of the program to get enough representatives given how intense the demand is.²¹¹ However, the ideal universal representation programs should be imple-

204. See Section III.

205. See Section III.A.1.

206. Marks, *supra* n. 2.

207. See Section III.A.2.

208. See Section II.A.

209. ACLU, *supra* note 43, at 28–31. (This note is not correct, but it is unclear what source is being referenced since there are multiple different ACLU references)

210. *Id.* (see above).

211. See Section III.A.2.

mented with accredited representatives being part of the mix. While accredited representatives are not prohibited right now from being staffed in a universal representation program, it is still important to emphasize that they can play a significant role in alleviating the lack of available representatives. Adding in accredited representatives would help ease the demand by having additional competent legal help to take on cases.²¹² Accredited representatives often come from the communities they end up working with and are likely to add to the number of representatives who possess necessary language skills,²¹³ making the universal representation programs even more culturally competent. To make accredited representation easier to obtain, all universal representation programs should go through the recognition and accreditation process to be recognized as an organization that can employ accredited representatives. This will give accredited representatives more flexibility in choosing where they want to work and can allow them to stay in the communities in which they grew up in and may want to serve.

That is not the only recommendation for addressing the concerns with the accredited representative program. Given that there are substantially more partially accredited representatives than there are fully accredited ones, partially accredited representatives should be able to represent clients at lower-stakes hearings, such as bond hearings, master calendar hearings, and hearings seeking continuances.²¹⁴ This way, fully accredited representatives will have more time to focus on preparing for the actual deportation defense hearings and potentially be able to take on more cases. Because recognized organizations are hesitant to allow accredited representatives to provide deportation defense,²¹⁵ training programs could be more rigorous in providing hands-on training to accredited representatives, such as by allotting time to shadow deportation defense in action.

Further, larger-scale changes in the legal field could encourage more people to become accredited representatives—such as through obtaining more funding for accredited representative education and training, building coalitions to better support accredited representation as its own profession, and offering scholarships for people from diverse communities to attend representative training.²¹⁶ Accredited representatives could play a substantial role, particularly in rural areas to narrow the access to justice gaps if they are from those areas and want to serve them. Universities and organizations that host accredited representative trainings should offer scholarships to people from rural areas to encourage them to pursue this profession. Students would not even have to move given that the trainings are typically conducted online.²¹⁷ Because there is little research regarding why the numbers of accredited representatives are so low, there should be an in-depth research survey and study analyzing this question, and the results should be used to make accredita-

212. See Section III.B.1.

213. Pistone, *supra* n. 81, at 916.

214. MUZAFFAR CHISHTI, ET AL., *supra* n. 146, at 42.

215. Benjamin, *supra* n. 9, at 301.

216. Pistone, *supra* n. 81, at 893.

217. Pistone, *supra* n. 81, at 915.

tion more accessible. Accredited representatives could play a major role in alleviating the barriers for immigrants to access justice, but the program must evolve to better recruit and retain people in the profession.

Realistically, planning, funding, and implementing universal representation programs will not happen overnight. But for people in detention, their lives and immigration proceedings will not stop while those programs are being drafted and put in place. Until universal representation programs are implemented, the LOP can still be of critical value in helping detained noncitizens understand their immigration proceedings and figure out whether they have a defense claim. The LOP can be especially important in rural, remote areas where it is even more difficult to reach lawyers because they are physically too far away, and where phone lines are not reliable. While traveling far to visit a client many times to discuss their case and prepare for the hearing may be too much for individual representation, traveling monthly, for instance, to visit a larger group of people at a detention center and give orientations may be more sustainable. Having LOP representatives come in-person can make a huge difference in how much a person understands immigration procedures, what rights they have, and whether they have a viable defense to deportation. Accredited representatives can and should continue to play a critical role in helping run LOPs, which would help expand the program and give accredited representatives the opportunity to begin handling defense cases. Having accredited representatives run the LOP will also help with time management during visits as more people can run either group or individual orientations at once.

While the LOP has not been successful in the past with referrals,²¹⁸ this is likely an issue with lawyers' perceptions of the likelihood of success of a detained immigrant's claim. Detained immigrants are less likely to succeed on their deportation defense claims,²¹⁹ but that does not mean they do not deserve representation or would not be more likely to be granted relief if they had representation. This underscores why merits-blind universal representation is critical to giving all immigrants a chance to obtain immigration relief they are entitled to. This conception of detained immigrants not being worthy of representation must change within the broader legal community if the LOP is to be more successful. The lack of concrete knowledge regarding why referrals were so unsuccessful indicates that more research needs to be done on the LOP and the ways in which it is currently operating. As noted above, the most recent full report that the Vera Institute conducted on the program was in 2008,²²⁰ and is incredibly outdated. Improving the LOP requires knowing the recent data on the program. Despite these necessary changes, there is still an important aspect of LOP that cannot be overappreciated—the support system LOP administrators offer to detained noncitizens who are isolated in this

218. SIJLC, ET AL., *supra* n. 176, at 21.

219. See TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *Outcomes of Immigr. Court Proceedings through March 2024* [<https://perma.cc/9VYJ-6FCT>] (last visited May 7, 2024).

220. SIJLC, ET AL., *supra* n. 176, at 21.

complex legal system. While the LOP would not hold as much significance if a universal representation program existed, it should continue to exist and fill the access to justice gap until all detained noncitizens who cannot afford an attorney are represented.

Conclusion

“We will settle for nothing less than an end to the criminalization of immigration. The only true alternative to detention is freedom.”

Mario Perez, immigrant from Mexico²²¹

Access to justice for detained noncitizens is a continually growing crisis.²²² Immigrants forced into detention centers face a myriad of barriers—both physical and informational—that essentially strip them of their ability to pursue and obtain the immigration relief they are entitled to.²²³ While universal representation programs, accredited representation, and the LOP have all been pursued as legal interventions, they all have opportunities and limitations which have restricted their ability to completely narrow the access to justice gap. However, universal representation programs that include accredited representatives, along with utilizing the LOP while these universal programs are being drafted and implemented, can address the shortcomings of each intervention while focusing on each program’s strengths.

As I asserted in the Introduction of this Article, the only substantial solution to the access to justice gap for detained noncitizens is eliminating the criminalization of immigration. While focusing on increasing representation rates for detained immigrants “may lead to releases for some people, tying representation to detention legitimizes the detention system and does not reduce its scale.”²²⁴ Although representation matters the now, the abolition of the system that criminalizes immigration is the ultimate goal.

221. ALY PANJWANI & HANNAH LUCAL, *TRACKED & TRAPPED: EXPERIENCES FROM ICE DIGITAL PRISONS* 4 (2022) [<https://perma.cc/53BC-44FJ>].

222. *New Proceedings Filed in Immigration Court Through February 2024*, *supra* n. 5.

223. *See* Section II.

224. *Ending Immigration Detention: Abolitionist Steps v. Reformist Reforms*, *Detention Watch Network* (2022) [<https://perma.cc/D56P-663R>].