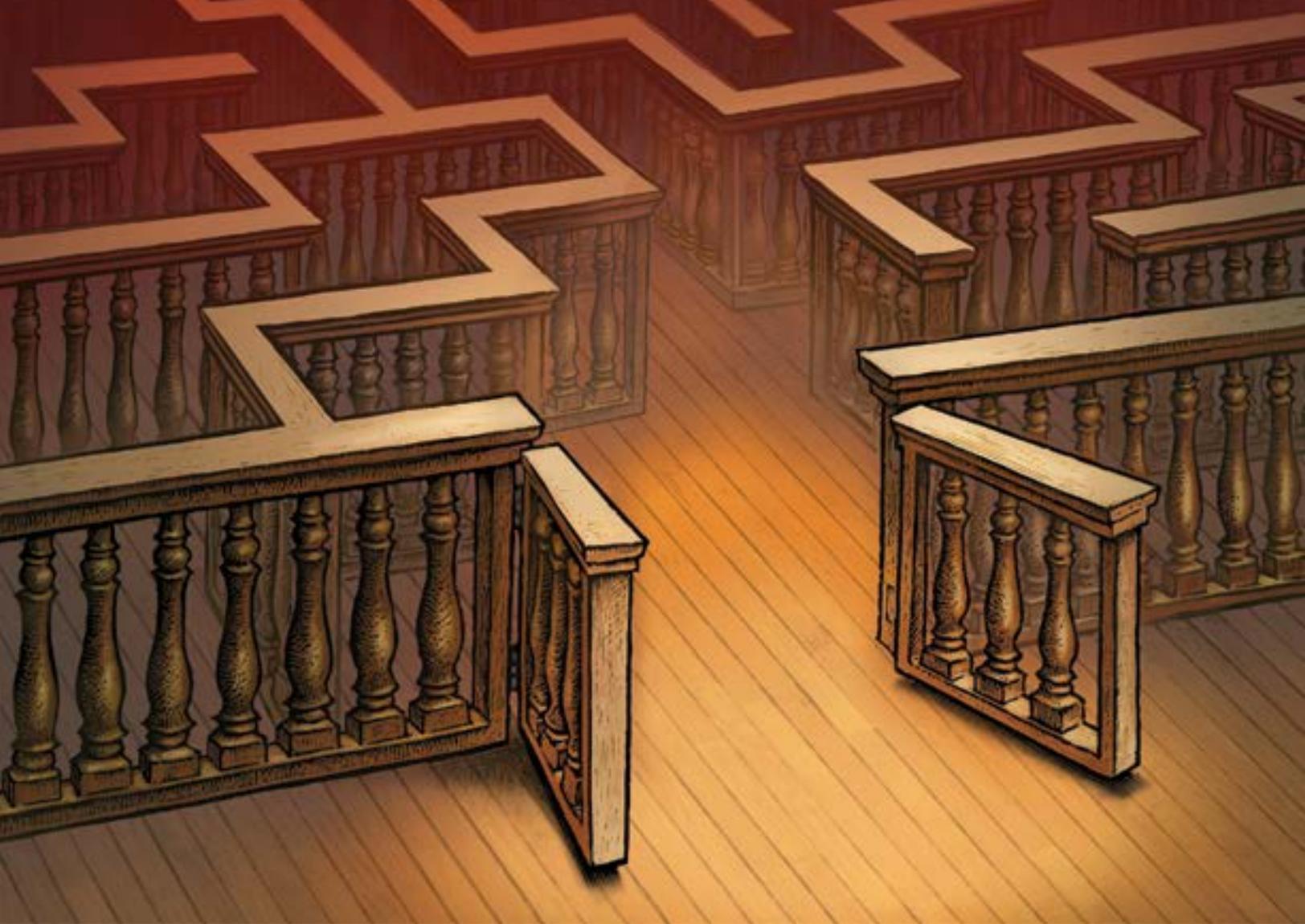


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Advancing Universal Representation: A Toolkit

Module 1: The Case for Universal Representation

Karen Berberich, Annie Chen, Corey Lazar, and Emily Tucker



About this report

The Center for Popular Democracy (CPD), the National Immigration Law Center (NILC), and the Vera Institute of Justice (Vera) work together to expand the national movement for publicly funded universal representation. CPD and NILC provide strategic support to local and state advocacy campaigns. In 2017, Vera launched the Safety and Fairness for Everyone (SAFE) Network in partnership with a diverse group of local jurisdictions, all dedicated to providing publicly funded representation for people facing deportation. Through the SAFE Network, Vera provides strategic support to government partners, legal service providers, and advocates. Collectively, CPD, NILC, and Vera also coordinate at a national level, creating resources and space for advocates advancing universal representation to share, strategize, and learn from one another.

This report is the first component of a three-part toolkit (Modules 2 and 3 forthcoming in 2019) informed by CPD, NILC, and Vera's experiences advancing the universal representation movement. These experiences have been guided by the expertise of advocates, organizers, legal service providers, and policymakers across the country who have led publicly funded deportation defense efforts. The toolkit is intended to equip these same stakeholders with strategies to make the case for implementing and sustaining universal representation programs. For more information, see www.vera.org/universal-rep-toolkit.



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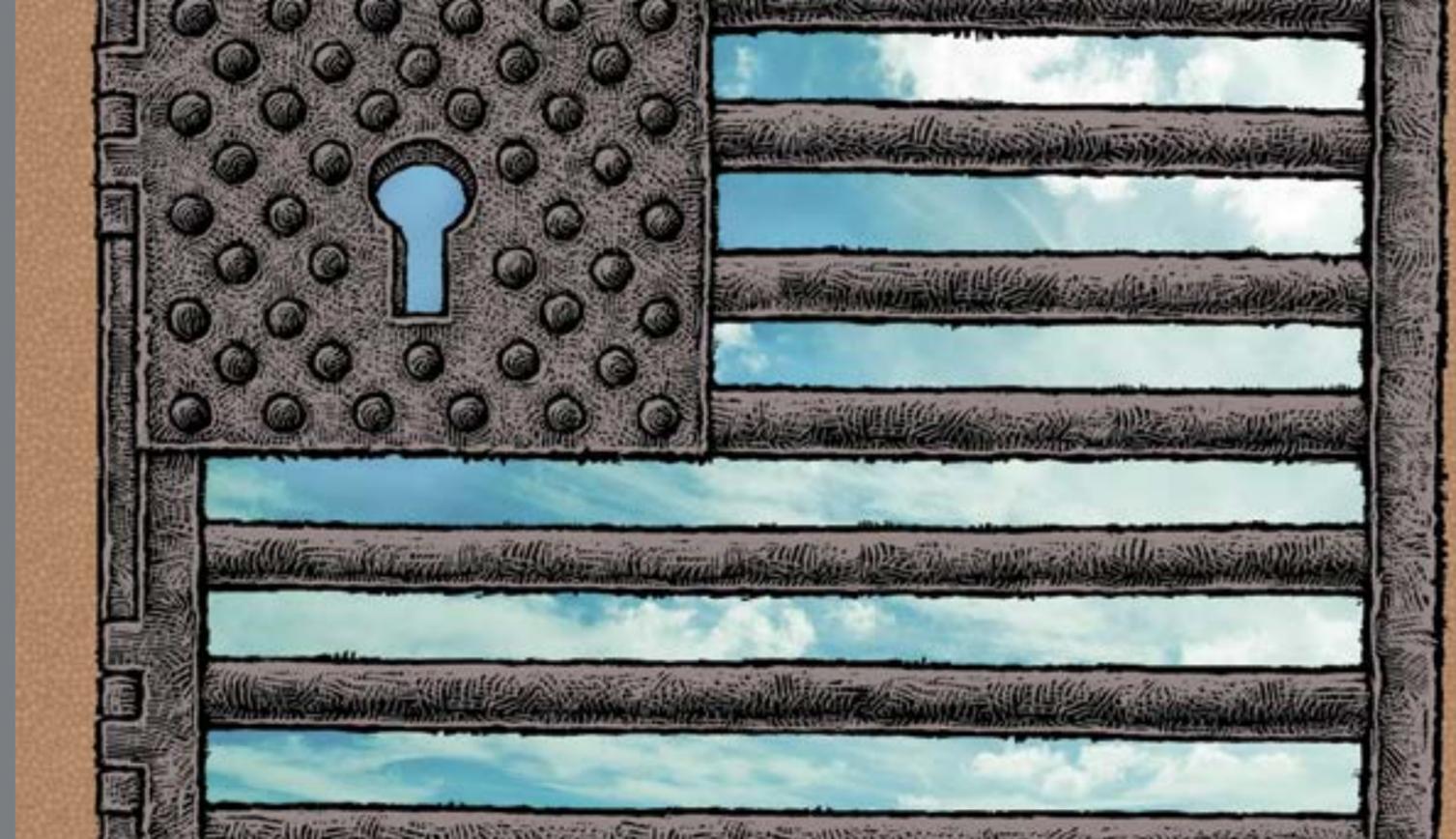
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The Problem

The lack of a right to government-funded counsel in the immigration justice system eviscerates due process

One way in which the government deports immigrants from the United States is by placing them in *removal proceedings* in immigration courts administered by the U.S. Department of Justice. Removal (also known as *deportation*) is one of the most severe penalties a person can face under law.¹

For those deported, these proceedings carry dire consequences—physical exile from one’s home, separation from one’s family, loss of employment, and potential violence or death on return to the country of origin. Despite the high stakes, people in immigration proceedings do not have the right to government-funded counsel. They must navigate the notoriously

complicated and ever-changing labyrinth of immigration law alone against a trained government attorney, without the help of a lawyer.²

Considering the severe consequences of deportation, the lack of a right to government-funded counsel in removal proceedings violates due process and the basic fairness considered fundamental to the justice system and American society as a whole. As the Fifth Amendment to the U.S. Constitution, which has been held applicable to deportation proceedings, states, “No person shall . . . be deprived of life, liberty, or property, without due process of law.”³

The right to appointed counsel, which the U.S. Supreme Court describes as “necessary to insure fundamental human rights of life and liberty,” has thus far only been applied in criminal proceedings.⁴ Yet the complexities of immigration law and the severe consequences at stake make it unjust and unreasonable to expect individuals to represent themselves competently in immigration court.

Indeed, it is nearly impossible to win relief from deportation without the assistance of counsel—only 5 percent of those who won relief between 2007 and 2012 did so without an attorney.⁵

Nonetheless, the lack of appointed counsel means that tens of thousands of people each year go unrepresented, including asylum seekers, longtime legal residents, immigrant parents or spouses of U.S. citizens, and even children. In some cases, unrepresented U.S. citizens have been detained and deported despite their citizenship.⁶

The result is an immigration court system that appears more like a mass deportation pipeline than a venue where people can fairly present the individual circumstances of their cases.

Immigrants in detention are the least likely to secure representation and the most vulnerable to deportation

Compounding the lack of government-appointed counsel for immigrants in removal proceedings, *detained* immigrants face particularly significant challenges in accessing representation. In recent years, representation rates for those detained have hovered around 30 percent, leaving the remaining 70 percent to fend for themselves without the benefit of counsel.⁷

Detention centers are often located in remote areas of the country, away from where attorneys are likely to be concentrated.⁸ Yet even in major cities like New York, rates of representation were abysmal before the introduction in 2013 of an appointed counsel program for indigent immigrants facing deportation.⁹

The loss of liberty and free movement that characterize detention introduce additional obstacles into the already daunting process of individuals trying to represent themselves effectively. It is extraordinarily difficult to gather evidence in support of one’s legal case from the confines of detention. Without internet access and with telephone access that is both expensive and highly restricted, it can be challenging—often impossible—for detained immigrants to obtain documents from other countries.¹⁰ These documents may include police reports, hospital records, local news articles, supporting affidavits, and certificates of birth, marriage, or death: the kind of evidence that is critical to securing release from detention on bond while the case is pending or establishing a defense to deportation.

Detained, unrepresented immigrants therefore face potentially insurmountable challenges to effectively presenting their cases.

Due process for immigrants has been under attack for decades—and recent policy changes bring renewed urgency to the crisis

Two laws enacted in 1996 dramatically expanded the government’s unchecked authority to punish people using immigration detention and deportation: the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA).¹¹

These laws significantly expanded who could be subject to mandatory detention, eliminated the right of some immigrants to make their case before a judge, and exacerbated the racially disproportionate impacts of detention and deportation.¹² The impact of these and related policies have been startling, with more immigrants deported between 2000 and 2015 than were deported in the entire 150 years prior.¹³

The situation has only worsened in recent years, as the federal executive branch has instituted policies that broaden who is targeted for enforcement while limiting available defenses. Immigration judges have largely been stripped of their discretion to decide many potential issues that come before them, and, in the face of a constantly burgeoning caseload, have been put under pressure to complete cases faster.¹⁴

✦ In recent years, representation rates for those detained have hovered around 30 percent, leaving the remaining 70 percent to fend for themselves without the benefit of counsel.

Attempts to radically limit the scope of who is eligible for asylum (a form of immigration relief for individuals fleeing persecution) and other relief have threatened to overturn decades of established precedent.¹⁵ Those previously granted the right to remain in the country—including recipients of Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS)—have been forced to file litigation in federal courts to protect the sudden loss of their right to remain in the United States.¹⁶ Immigrant children have been forcibly torn from their parents and detained.¹⁷ Even naturalized U.S. citizens have been targeted for enforcement after decades of lawful residency due to minor inconsistencies on their citizenship applications.¹⁸



The Solution

Universal representation—publicly funded deportation defense for all—is more urgent now than ever before

In this treacherous environment full of new policies that sow uncertainty and fear in immigrant communities, widespread access to counsel is urgently needed. Recognizing the need to act, communities have begun to organize with a growing and diverse group of state and local governments around the country moving to fill the gaping hole left by the failure of the federal system. These local and state governments have led the way by dedicating public taxpayer dollars for sorely needed deportation defense programs.

The six pillars of the universal representation model

This guide advocates for a “universal representation” model of deportation defense. Under this model:

- 1. Every person facing imminent threat of deportation is represented by an attorney.**
- 2. Where resources are limited, representation for those in detention is prioritized.**
- 3. There are no eligibility criteria other than income and a lack of private counsel.**

Akin to public defense in criminal cases, no one is excluded on the basis of a prior criminal conviction, residency outside of the funded jurisdiction, or any other reason.

- 4. Representation is merits-blind.**

Clients are represented without considering the likelihood that the case will have a “successful” outcome in immigration court.

- 5. Representation is continuous and begins at the onset of the case.**

Attorneys represent clients until there is a final decision on the case: from bond hearing to hearings challenging underlying criminal convictions or other collateral proceedings, through to appeal. This continuity of representation exists even if the person is transferred to a different jurisdiction or voluntarily moves upon release from custody.

- 6. Public taxpayer dollars fund representation.**

Protecting the basic right of due process is a public duty. Investing public money is also critical to sustaining and institutionalizing universal representation locally while building toward a national system of deportation defense.

It will not always be feasible—due to limitations of funding, local political landscapes, or local legal services infrastructure—to meet all of these criteria at the outset of a deportation defense program. However, these principles together establish a “North Star” that sets a course toward fully funded and sustainable programs in individual jurisdictions and a federally recognized right to government-funded counsel in removal proceedings for everyone.



Advantages of the Universal Representation Model

Universal representation is based on a steadfast belief that everyone deserves due process

Universal representation means representation for all, regardless of the perceived likelihood of the case succeeding, the client’s residency, or the client’s previous contact with the criminal justice system.¹⁹ Without a universal system, such case characteristics can compound the challenges that immigrants in detention face in obtaining counsel.

Universal representation does not predict the outcome of a case, but it does ensure access to due process for all. In contrast, relying on a small pool of available attorneys to represent only those clients with the most

winnable or otherwise appealing cases creates a hierarchy of who deserves representation. This limits the likelihood that the most vulnerable people and those with the most challenging cases will ever be represented. It also ensures that cases that could be won with the assistance of an attorney or through vigorous and persistent legal advocacy end instead in deportation. Although selecting cases for representation based on the initial perceived likelihood of success might garner more wins in the short term, this practice undermines the principle that everyone facing deportation should receive due process. Everyone deserves an opportunity to be treated fairly and with dignity, including those who do not even wish to fight their cases.

✦ **Universal representation means representation for all, regardless of the perceived likelihood of the case succeeding, the client’s residency, or the client’s previous contact with the criminal justice system.** ✦

Universal representation does not permit exclusions from representation based on residency in a particular jurisdiction or based on previous arrests, convictions, or other encounters with the criminal justice system (“due process exclusions”).²⁰ Restricting eligibility to clients who are residents of a jurisdiction has the effect of excluding some of the most vulnerable clients: asylum seekers and youth in detention, who have just arrived in the country and have not yet had the opportunity to establish residency in a community.

Additionally, exclusions based on contact with the criminal justice system run counter to the fundamental principle of due process in accepting and perpetuating the biases baked into the criminal justice system that contribute to

system involvement in the first place.²¹ *Due process exclusions* bar people who may have valid legal defenses from even being eligible for representation.

Adopting *due process exclusions* further eliminates the opportunity to provide a critical check on how the immigration enforcement system treats criminal convictions. For example, although the Department of Homeland Security (DHS) can attempt to deport someone based on a past conviction, DHS’s characterization of that conviction can be inaccurate or insufficient to warrant deportation, often requiring complex legal arguments to challenge DHS’ allegations. An attorney is crucial to holding the government to its burden to prove that the law requires that an individual be deported. Moreover, there are avenues by which criminal convictions can be challenged and overturned—a process that is complicated and likely nearly impossible to do without counsel.²²

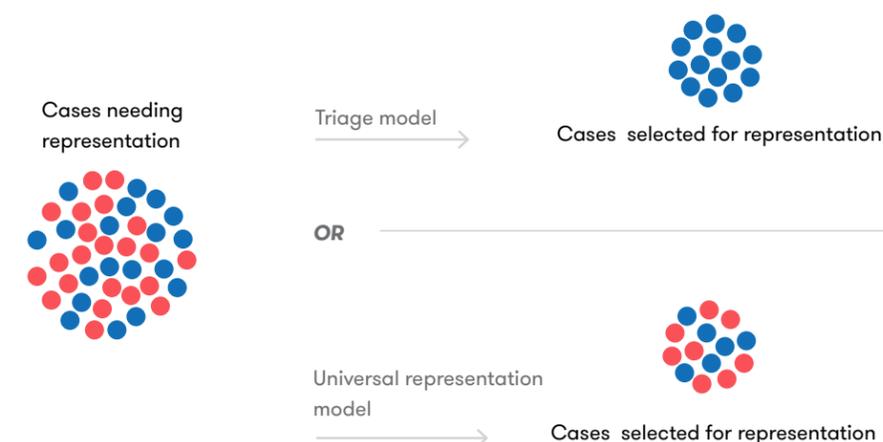
A universal representation approach challenges these injustices by insisting that representation is about the fundamental fairness to which all human beings are entitled.

Figure 1 below demonstrates the distinction between the people served by a universal representation program and those served by a triage model,

Figure 1

The triage vs. the universal representation model

● Case perceived as likely to win ● Case perceived as unlikely to win



where attorneys perform a preliminary review of cases before selecting whom they want to represent. The universal representation system ensures that people with all types of cases and backgrounds have access to expert legal support, preventing prejudice in who receives legal services and promoting fairness for all.

Universal representation safeguards due process by allowing all immigrants to access the rights afforded to them under existing law

While the universal representation model succeeds by bringing due process to individuals who would otherwise be denied that basic right, it also yields “traditional” successes in the form of positive case outcomes.

Many people in removal proceedings have valid legal claims to remain in the United States but no feasible way to articulate these claims without the assistance of counsel.

Research has consistently demonstrated a strong relationship between the assistance of counsel and case outcomes in general. One study found that detained immigrants are up to 10.5 times more likely to succeed in their legal cases when represented than when unrepresented, and other studies have found similar results.²³

The universal representation model, specifically, also generates positive outcomes even when cases are not selected based on their perceived likelihood of success. Notwithstanding the lack of screening for likelihood of success, cases accepted under the universal representation model frequently win. Vera’s evaluation of the New York Immigrant Family Unity Project (NYIFUP), the first publicly funded universal representation program in the nation, demonstrated that representation has a significant effect on case outcomes, independent of other factors. Under NYIFUP’s universal representation model, detained immigrants in New York City saw the odds of winning their cases increase by 1,100 percent.²⁴

The success of NYIFUP demonstrates how universal representation generates positive case outcomes for clients even when such outcomes were initially thought improbable. If not for universal representation,

such clients would most likely go unrepresented and eventually be deported. Because their defenses are not immediately apparent from a single legal screening, they would be barred from exercising their legal rights. For example, cases may involve sensitive or traumatic facts a client is not comfortable sharing right away. The case may also contain novel, harder-to-identify issues that can require further legal research or litigating on appeal. Universal representation protects against this unfairness.

✦ **Detained immigrants are up to 10.5 times more likely to succeed in their legal cases when represented than when unrepresented.** ✦

The universal representation model can also help legal service providers attain more balanced caseloads. Cases that lack valid defenses or claims for relief, which demand less time and effort from attorneys, can be resolved quickly and removed from caseloads. This frees up resources for cases that require multiple applications and court appearances.

Universal representation enhances procedural justice and restores dignity

While helping the client remain legally in the United States is often the goal of representation, the universal representation model achieves a different kind of success regardless of the ultimate legal outcome. For clients, obtaining due process and support from someone who can explain their options—a modicum of fairness and dignity in an otherwise daunting immigration system—is, in itself, a substantial success.

Regardless of a case’s ultimate result, there is real value in empowering clients to understand the options before them and subsequent outcomes.

Representation gives clients an opportunity to have their voices heard, becoming more actively engaged in their own fate, rather than being silenced. This is known as *procedural justice*, where the fairness and transparency of the proceedings themselves bring a form of justice regardless of the case outcome.²⁵

By preserving the fairness of immigration court, representation upholds trust in the legal process and strengthens the legitimacy of the very institution itself.²⁶ Treating clients fairly and respectfully restores their human dignity—a significant departure from the dehumanization that immigrants may have felt up to that point.

That clients and their families recognize that someone is fighting for them and protecting their rights, even if there is no path to avoid deportation, is therefore a critically important value of universal representation. It also promotes trust in public institutions so that residents see their justice systems—from policing to the courts—as delivering on the promise of fairness.

Universal representation is scalable and can begin with a pilot program

The universal representation model is scalable in a way that a triage model is not. While true universal representation—in which all immigrants are represented in their proceedings—often requires a substantial investment, a jurisdiction can begin with a small pilot program.

A pilot program using a universal representation model funds representation for a limited number of clients selected on a merits-blind basis. A universal representation pilot program lets program managers develop long-term strategic plans and test and identify appropriate levels of staffing, caseloads, and other resources before expanding to serve larger numbers of people with the goal of full-scale universal representation. The early successes of the pilot can further demonstrate the need for and impact of representation, cultivating support that helps the program grow and build on its solid organizational foundation with best practices that can be readily scaled.

Attorneys working under a universal representation model will become accustomed to representing clients in a broad variety of circumstances. They will see themselves as public defenders who understand the

challenges of counseling clients with and without defenses. This dexterity of practice makes it easier to scale up the size of a universal representation program than to scale up a program that triages cases.

For example, a triage model can keep attorneys returning to familiar fact patterns and legal issues with which they feel comfortable in an effort to preserve time and resources. This specialization limits the expertise of the legal team, making it far more difficult to expand to meet the needs of the broader client population.

✦ **Employing a universal representation model from the inception increases the likelihood of eventual funding for all eligible immigrants in a jurisdiction.** ✦

Moreover, a triage model decreases the likelihood that people with complicated criminal justice involvement will be served, perpetuating the injustices of the criminal enforcement system. In contrast, the diversity of experience among lawyers trained in the universal representation model equips them with the skills to support the complex and diverse needs of immigrant communities while promoting fundamental fairness for all people at risk of deportation.

Employing a universal representation model from the inception of a project increases the likelihood of eventual funding for all eligible immigrants in a jurisdiction. There is a clear path from a pilot program implementing a universal representation approach to a full-scale universal representation program. However, starting with, and building on, a triage model creates challenges for scaling up to full universal representation. A triage model means that at a certain level of funding, all those whose cases are considered “winnable” will receive counsel. At that point, policymakers may have a hard time justifying allocating additional resources to deportation defense if they think the outcomes for remaining unrepresented cases are likely to be negative.

Universal representation helps ease the suffering associated with prolonged detention

For many immigrants, being released from detention may be almost as important as the ultimate legal outcome. People who are accused of being in the country without authorization can be detained for the entire duration of their legal proceedings. Representation is critical to releasing them from custody, just as it is to the ultimate outcome of the case. For those who are represented, the odds of being granted bond are 3.5 times more likely than unrepresented people, even controlling for other factors.²⁷

Attorneys play a crucial role in not only securing their clients' release from custody—allowing them to return to their families and livelihoods in the community—but in ensuring that those clients subsequently appear in court. When the government detains people during their removal proceedings, one of the primary reasons is to ensure that they make their upcoming court appearances.²⁸ Representation aids in this goal: between 2007 and 2012, only 7 percent of represented people were ordered removed *in absentia* for failing to appear in court, compared to 68 percent of those unrepresented.²⁹ Similarly, less than 2 percent of NYIFUP clients released on bond were ordered removed *in absentia*.³⁰

The influence of representation on rates of release has profound, tangible impacts for clients by offsetting the negative impacts of detention. Detention results in loss of income and often in loss of employment, significantly hindering immigrants' ability to financially support themselves and their families. The financial instability this causes can mean losing housing and access to medical care, often for the entire family, including members who are U.S. citizens. As one immigration lawyer notes, “On almost every case, we represent an entire family.”³¹ Further, because immigration is a federal system, detainees can be held anywhere in the country, rendering visits to faraway families next to impossible.

Beyond the obvious trauma of separation, children suffer in other ways when their parents are detained or deported. Facing mental health concerns and financial instability in the home, some children may drop out of school.³² Given that almost 18 million children living in the United States (one-quarter of all children) have at least one foreign-born parent, the

devastating consequences of parental detention and deportation are felt in every corner of the country.³³

Universal representation expands access to the economic advantages of representation, is cost-effective, and maintains stability in communities and economies

Representation generates practical cost savings for communities and the economy at large. These economic ripple effects extend beyond any individual client.

When someone wins a legal case in immigration court, that person also obtains—or maintains, for those with existing legal status—work authorization. Work authorization allows people to participate in the formal economy by holding jobs, generating tax revenue that benefits all levels of government. For example, NYIFUP was estimated to lead to a \$2.7 million increase annually in federal, state, and local tax revenue due to clients gaining or maintaining work authorization.³⁴

The potential economic benefits of representation in immigration court extend far beyond tax revenue. A report coauthored by the Center for Popular Democracy (CPD) projected that NYIFUP clients who win their legal cases would retain their jobs, likely reducing unnecessary turnover-related costs for employers.³⁵

Further, available evidence indicates that the unimaginable trauma for children of parental detention and deportation could have unforeseen economic consequences, such as limiting their lifetime earning potential and increasing healthcare-related costs for the state.³⁶ Representation that offsets these negative impacts therefore likely also yields associated economic benefits.

NILC's report *Blazing a Trail* suggests that representation reduces financial costs to the federal government associated with prolonged detention.³⁷ Universal representation would also generate other system efficiencies, such as reducing the time needed to find an attorney and reducing the time those without relief spend languishing in detention.³⁸

Universal representation in the immigration system promotes racial equity

The universal representation model ensures that representation in the immigration system operates in a racially equitable way. Universal representation mitigates bias from the distribution of legal services, whereas a triage model reinforces the notion that some are worthier of due process and representation than others. This perpetuates the unequal treatment of immigrants, disproportionately people of color, who have been previously subjected to contact with the criminal justice system.

The close linkage between the U.S. immigration and criminal justice systems has resulted in disparate impacts on communities of color.³⁹ The unequal treatment of people of color in the criminal justice system is well documented: people of color are more likely to be stopped by police, searched, charged with crimes, prosecuted, and convicted, and are sentenced more severely.⁴⁰

✦ As the disparate racial impacts of policing, and the criminal justice system more generally, cascade into the immigration system, immigrants of color are disproportionately targeted for immigration enforcement actions. ✦

In legislation passed in 1996, Congress linked the immigration system with the criminal justice system more closely than ever, amplifying the effects of this racial inequity. This legislation established harsh new consequences for a broad range of criminal convictions and, in some instances, even for arrests. Contact with the criminal justice system could now result in mandatory detention, ineligibility for certain forms of relief, and

permanent bars to re-entering the United States.⁴¹ In addition, local police and federal immigration enforcement now work in tandem with increasing regularity across the country, meaning that routine interactions with the criminal justice system—even without any arrest or conviction—have led to increased numbers of immigrants being referred to immigration authorities and routed into removal proceedings.⁴²

As the disparate racial impacts of policing, and the criminal justice system more generally, cascade into the immigration system, immigrants of color are disproportionately targeted for immigration enforcement actions. A wrongful arrest on the basis of race can lead easily to deportation.⁴³ In this respect, the same prejudices that pervade the criminal justice system extend to the immigration system: black people are more likely than white people to be targeted by police and black immigrants are more likely to face immigration enforcement.⁴⁴

Immigrants of color who face detention and deportation on criminal grounds therefore face a double penalty. Denying representation—and thus due process—to individuals with criminal histories therefore compounds this inequity and exacts a triple penalty.



Conclusion

Expanding universal representation programs in communities across the country is crucial to building the national movement to uphold due process for all people at imminent risk of deportation. These programs bolster the vibrancy and stability of communities, keep families united, and build toward the goal that everyone at risk of deportation has a strong, effective advocate. Universal representation promotes racial equity, preventing the further amplification of racially disparate outcomes. As a result, everyone involved with the immigration system achieves better outcomes.

As jurisdictions demonstrate success building scalable and replicable programs that offer representation for all, CPD, NILC, and Vera expect that support for the universal representation model will continue to expand nationwide. These models will help lay the groundwork for a federally funded system of representation and ultimately a right to government-funded counsel that is desperately needed in the national immigration justice system.

Endnotes

- 1 The terms *removal* and *deportation* are used interchangeably, though there are distinctions under the law.
- 2 On the labyrinthine nature of immigration court, see *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003); and Noel Brennan, “A View from the Immigration Bench,” *Fordham Law Review* 78, no. 2 (2009), 623-31, 624, <https://perma.cc/VEU8-GJ3L>.
- 3 The U.S. Supreme Court has held that the right to due process applies to deportation proceedings. See *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings”).
- 4 *Johnson v. Zerbst*, 304 U.S. 458 (1938); and *Gideon v. Wainwright*, 372 U.S. 335 (1963).
- 5 Ingrid V. Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review* 164, no. 1 (2015), 22-24 & figure 4, <https://perma.cc/7J65-CZCM>.
- 6 Deportation Research Clinic, Buffett Institute for Global Studies, Northwestern University, *United States Citizens in Deportation Proceedings: Immigration Court ‘Code 54’ Adjournments, January 1, 2011 to June 9, 2017* (Evanston, IL: Deportation Research Clinic, 2017), <https://perma.cc/3BKR-9FK6>.
- 7 Transactional Records Access Clearinghouse (TRAC), “Who Is Represented in Immigration Court?” figure 1, October 16, 2017, <https://perma.cc/HPX7-GPF6>.
- 8 Eagly and Shafer, “National Study of Access to Counsel,” 2015, 40-43.
- 9 Sixty percent of detained immigrants were unrepresented by the time their cases were completed. See Study Group on Immigrant Representation, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* (New York: Cardozo School of Law, 2011), 3, <https://perma.cc/9DAW-ZDDJ>.
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- 11 Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208 (September 30, 1996); and Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (April 24, 1996).
- 12 The processes that allow the federal government to deport certain categories of individuals without an opportunity to present their cases in front of an immigration judge are known as expedited removal (permitting summary removal of non-citizens who seek entry at a port of entry or those found within 100 miles of the border within 14 days of their arrival to United States who lack proper entry documents), reinstatement of removal (permitting summary removal of non-citizens who return to the United States unlawfully after having previously been deported), and administrative removal (permitting summary removal of non-lawful permanent residents convicted of an aggravated felony). They were established through IIRAIRA in 1996. On the racially disproportionate impacts of detention and deportation, see Juliana Morgan-Trostle and Kexin Zheng, *The State of Black Immigrants—Part II: Black Immigrants in the Mass Criminalization System* (New York: Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, 2016), <https://perma.cc/NHM8-CFFZ>.
- 13 Office of Immigration Statistics, *2015 Yearbook of Immigration Statistics* (Washington, DC: DHS, 2016), 103 & table 39, <https://perma.cc/6ZQ9-ATKV>.
- 14 See U.S. Department of Justice (DOJ), Office of the Attorney General, *Matter of L-A-B-R- et al.*, 27 I&N Dec. 405 (A.G. 2018); and Laura Meckler, “New Quotas for Immigration Judges as Trump Administration Seeks Faster Deportations,” *Wall Street Journal*, April 2, 2018, <https://perma.cc/VM34-W4S3>.
- 15 See DOJ, Office of the Attorney General, *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); and Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55,934 (November 9, 2018) (to be codified at 8 C.F.R. Parts 208, 1003, & 1208), <https://perma.cc/7BQL-URS5>.
- 16 Under DACA, children under the age of 18 who were brought to the United States without authorization prior to 2012 are not targeted for deportation and are eligible to work lawfully. TPS provides temporary legal status to citizens of certain countries affected by armed conflict or natural disasters. For DACA, see *Regents of University of California v. United States Department of Homeland Security*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018). For TPS, see *Ramos v. Nielsen*, 321 F. Supp. 3d 1083 (N.D. Cal. 2018).
- 17 On family separation, see DHS, Office of Inspector General, *Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Washington, DC: DHS, 2018), <https://perma.cc/KP59-V64B>.
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- 19 For a discussion of the current and historical context for the universal representation model, see Lindsay Nash, “Universal Representation,” *Fordham Law Review* 87, no. 2 (2018), 503-29, <https://perma.cc/8XZ8-CVHC>.

- 20 See Lindsay Nash, “Universal Representation,” 2018, arguing that while some limits on the scope of the coverage in a universal representation model may be justifiable, restrictions like the convictions-based eligibility carveout threaten the most basic underpinnings of the universal representation project.
- 21 Elizabeth Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (New York: Vera Institute of Justice, 2018), <https://perma.cc/S3LD-TRAU>.
- 22 Jennifer Stave, Peter Markowitz, Karen Berberich, Tammy Cho, Danny Dubbaneh, Laura Simich, Nina Siulc, and Noelle Smart, *Assessing the Impact of Legal Representation on Family and Community Unity* (New York: Vera Institute of Justice, 2017), <https://perma.cc/3BWE-KSFD>.
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- 24 Vera found that the chances of a positive outcome went from 4 percent when clients were unrepresented to a projected 48 percent with an attorney. Vera developed a statistical model to estimate outcomes for cases that remained open at the time of the evaluation, given that longer cases are also most likely to win. See Stave et al., *Assessing the Impact of Legal Representation*, 2017.
- 25 See Steven L. Blader and Tom R. Tyler, “A Four-Component Model of Procedural Justice: Defining the Meaning of a ‘Fair’ Process,” *Personality and Social Psychology Bulletin* 29, no. 6 (2003), 747-58.
- 26 Research has shown that impressions of fairness in interactions with courts, law enforcement, and other authorities can influence perceptions around the quality and ethicality of decision making. See Tom Tyler and Robert Bies, “Beyond Formal Procedures: The Interpersonal Context of Procedural Justice,” in *Applied Social Psychology and Organizational Settings*, edited by John Carroll, 77-98 (Hillsdale, NJ: Lawrence Erlbaum 1990).
- 27 Emily Ryo, “Detained: A Study of Immigration Bond Hearings,” *Law & Society Review* 50, no. 1 (2016), 117-53.
- 28 DOJ, Office of the Attorney General, *Matter of Patel, I & N Dec. 666* (BIA 1976).
- 29 Eagly and Shafer, “National Study of Access to Counsel,” 2015, 74 & figure 20. Immigrants who fail to appear in court may be ordered deported *in absentia* for that reason alone, no matter what the merits of the case.

- 30 Only 10 of the 611 NYIFUP clients released on bond received orders of removal *in absentia* for failing to appear for a subsequent court date. Stave et al., *Assessing the Impact of Legal Representation*, 2017, 49, n. 64.
- 31 Stave et al., *Assessing the Impact of Legal Representation*, 2017, 53.
- 32 Center for Popular Democracy, Northern Manhattan Coalition for Immigrant Rights, Cardozo School of Law, and Make the Road New York, *The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers* (New York: Center for Popular Democracy, 2013), 11-12, <https://perma.cc/J37B-YPAB>.
- 33 Urban Institute, “Children of Immigrants Data Tool,” 2018. Data from the Integrated Public Use Microdata Series datasets drawn from the 2005-2015 American Community Survey, <https://perma.cc/7R7Q-75H5>.
- 34 Stave et al., *Assessing the Impact of Legal Representation*, 2017, 55 & 59.
- 35 Center for Popular Democracy et al., *New York Immigrant Family Unity Project*, 2013, 5.
- 36 *Ibid.*
- 37 The cost to the U.S. government of detaining a single person is between \$119 and \$159 per day. See National Immigration Law Center, *Blazing a Trail: The Right to Fight for Counsel in Detention and Beyond* (Los Angeles: National Immigration Law Center, 2016), 9, <https://perma.cc/3SYJ-CUEH>.
- 38 Eagly and Shafer, “National Study of Access to Counsel,” 2015, 59-72.
- 39 See generally The Sentencing Project, “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” April 19, 2018, <https://perma.cc/4KLR-2GAA>.
- 40 Hinton, Henderson, and Reed, *Unjust Burden*, 2018.
- 41 See Randy Capps, Muzaffar Chishti, Julia Gelatt, et al., *Reving Up the Deportation Machinery: Enforcement under Trump and the Pushback* (Washington, DC: Migration Policy Institute, 2018), <https://perma.cc/DT7N-NZ3K>.
- 42 *Ibid.*
- 43 Juliana Morgan-Trostle and Kexin Zheng, *The State of Black Immigrants—Part II: Black Immigrants in the Mass Criminalization System* (New York: Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, 2016), <https://perma.cc/NHM8-CFFZ>. Black people are arrested at 2.5 times the rate of

whites. They are more likely than whites to be sentenced to prison and less likely to be sentenced to probation. These disparities exist even when crime rates are the same; for example, although black and white Americans use marijuana at roughly equal rates, black Americans are 3.7 times more likely to be arrested for marijuana possession. *Ibid.*

- 44 Hinton, Henderson, and Reed, *Unjust Burden*, 2018. Black immigrants comprise 20 percent of immigrants facing deportation on criminal grounds, despite making up only 7 percent of the immigrant population in the United States. In general, 10 percent of all immigrants have criminal grounds for removability. See Morgan-Trostle and Zheng, *The State of Black Immigrants Part II*, 2016, 20.

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For more information about this report, contact Annie Chen, program director, SAFE Network, at achen@vera.org.

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Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
T 212 334 1300
F 212 941 9407

Washington DC Office
1111 14th Street, Suite 920
Washington, D.C. 20005
T 202 465 8900
F 202 408 1972

New Orleans Office
1307 Oretha Castle
Haley Blvd., Suite 203
New Orleans, LA 70113
F 504 312 4517

Los Angeles Office
634 S Spring Street, #300A
Los Angeles, CA 90014
T 213 416 0058
F 213 416 0075