



Civil Justice Needs Federal Leadership

By Maha Jweied and Karen A. Lash | September 16, 2019

Sonja's apartment is decorated with photographs and keepsakes that reflect her devotion to her family and her faith. Furniture is comfortably arranged to accommodate her walker, which she needs to get around at age 69. When her mobility got worse, Sonja's doctors wrote notes to the property manager explaining that she needed live-in help. She received approval from her property manager for her daughter to live with her for six weeks to help with everyday tasks such as cooking, cleaning, and running errands.

After the six weeks passed, Sonja was careful never to have her daughter stay more than was allowed. Nevertheless, the property manager claimed that the daughter was still living with Sonja and threatened eviction.

Sonja sought legal help from Nikki, an attorney at Pisgah Legal Services in Asheville, North Carolina. Nikki knew Sonja's pain and mobility issues meant that she had legal rights under disability law to receive in-home help with daily activities. Even so, the property manager attempted to use technicalities to deny her rights.

With Nikki's help, Sonja was able to stay in her home and finally got approval for the live-in aide she needs. "I can't think of a word that would describe the way I feel about Nikki and what all she's done," Sonja said. "I'll always count on her as a blessing from the Lord."¹

Sonja's case illustrates the kind of civil justice problems that threaten people's homes, health, and families. Every day, judges across the nation decide whether children stay with their families, domestic violence victims get restraining orders, and banks and landlords can take away people's homes. Executive branch agencies enforce laws regarding worker rights, housing discrimination, the provision of benefits such as Social Security, and dozens of other issues. But too often the resolution of these kinds of civil justice problems—in courts and before administrative bodies—depends more on an individual's wealth than whether the law is on their side.² And the odds of receiving equal justice under the law are stacked even higher against people of color.³

Millions of people like Sonja end up in civil court or administrative proceedings not because they have done something wrong, but because they do not recognize that they have a legal problem before it is too late and lack the information or help they need to avoid having to be there in the first place. When they do find themselves in civil court, in 3 out of 4 cases, one or both sides show up without any legal help, often because they cannot afford to pay a lawyer.⁴ This figure is often higher for cases involving domestic violence. For example, domestic violence litigants are self-represented approximately 80 percent of the time in Florida and up to 90 percent of the time in Arizona.⁵ Unlike in criminal court, where the court must appoint a lawyer when the accused cannot afford one, lawyers are usually not appointed in civil court even when basic life necessities are at stake.⁶

While civil legal aid programs exist in every state, funding barely provides one attorney for every 10,000 low-income Americans.⁷ That statistic does not even include the tens of millions of Americans who struggle to pay for legal help because they do not qualify for free federal legal assistance. Complex courtroom procedures and underfunded civil courts make it almost impossible for the average person to go it alone, especially given all the advantages that wealthy landlords, financial institutions, and other powerful players have when they lawyer up.

America has not met its promise of equal justice under law. Recent public opinion research commissioned by Voices for Civil Justice confirms that a solid majority of Americans—Democrat and Republican—want that to change. Eighty-four percent of voters say it is important for U.S. democracy to ensure that everyone has access to the civil justice system, and 82 percent agree that “equal justice under the law is a right, not a privilege.”⁸ Americans strongly favor reforming the civil justice system and increasing funding to make it more accessible. Yet the current administration seeks to eliminate the main federal funding source for civil legal aid and has also shuttered the only office in the executive branch dedicated to addressing gaps in access to justice.⁹

No one should lose their house, their health care, or their child because they cannot pay for legal help. It is time to fix the nation’s civil justice system so that it works for everyone, not just those who can afford to hire private lawyers.

This issue brief proceeds in three parts: Part 1 gives a brief history of the nation’s civil justice landscape; part 2 elaborates with specific examples of how civil legal aid helps individuals obtain health care, avoid evictions, remove barriers to employment for job seekers, find relief from illegal debt collection, and secure immigration status and describes how the federal government has supported or partnered with civil legal aid in these settings in recent years; and the conclusion urges leaders at all levels of government—especially the president—to step up to advance civil justice reform.

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Civil justice in the United States

Experience developed during the Obama administration clearly demonstrates that the executive branch can play a major role in closing the nation's justice gap. For example, former Attorney General Eric Holder's launch in 2010 of the U.S. Department of Justice's (DOJ) now-closed Office for Access to Justice led to President Obama establishing the White House Legal Aid Interagency Roundtable (LAIR). LAIR, in turn, began the long process of educating federal, state, and local policymakers and implementers, as well as the public, about how a little lawyering can both change lives and increase the effectiveness and fairness of government programs.¹⁰ That foundation is ready and waiting for the next administration.

Unfortunately, few elected officials of any political party talk about comprehensive civil justice reform, let alone develop proposals and policy positions. Many are fluent in strategies to address sentencing reform and mass incarceration with fully developed messages about diverting issues out of the criminal justice system.¹¹ But at the same time, they often ignore the civil justice problems that can precede or flow from an individual's involvement in the criminal justice system—such as loss of housing, employment, or even parental rights.¹²

According to sociologist Rebecca Sandefur, one of the country's leading researchers on the topic, more than 100 million people suffer civil justice problems annually.¹³ Problems such as wage theft, eviction, foreclosure, illegal debt collection, bankruptcy, domestic violence, access to medical care, and the care and custody of children and dependent adults too often lead to homelessness, poverty, illness, injury, and separating families who want to stay together. These devastating problems often morph from personal tragedies into policy conundrums such as child welfare, public safety, and adequate housing that elected and other government officials must struggle to address. The usual approach—passing a new law—may have little practical impact when the new or even existing protections are unknown and unenforced for lack of legal counsel.

This situation is compounded by the fact that the majority of low- and moderate-income Americans rarely think that their problems have legal solutions.¹⁴ A family threatened by unsafe housing conditions or overly aggressive debt collectors may see these as personal or social problems, or just bad luck. Relatedly, this means that low-income people are twice as likely as their moderate-income counterparts to not take action to address their civil justice problems.¹⁵ Too often this inertia causes problems to cascade for those who can least weather the deluge. But raising awareness about the power of legal help can prevent a debt collection problem from becoming health, housing, and employment problems—and, for some, desperation and hopelessness that may even lead to criminal justice problems.

The limitations of existing resources mean that today's legal services providers—who cannot satisfy the current need—would have little chance of meeting the increased

demand if more low-income people better understood how to seek the legal help they need. Indeed, perpetually underresourced civil legal aid programs all but ensure a continued gap between the need for and supply of legal services. The federally funded Legal Services Corporation (LSC) distributes more than 90 percent of its total congressional appropriation to 132 independent legal aid programs that provide services in every congressional district. But their \$415 million fiscal year 2019 budget addresses only a tiny fraction of the needs of the nearly 59 million Americans—almost 20 percent of the U.S. population—who are eligible for LSC-funded free legal aid because their incomes are at or below 125 percent of the federal poverty guidelines.¹⁶ In their most recent survey of legal needs, LSC’s 2017 report, “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans,” explored the “justice gap,” the difference between the civil legal needs of low-income Americans and the resources available to meet those needs. The report concluded that 86 percent of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help.¹⁷

There is a civil justice crisis in this country¹⁸

In **Arizona**, 90 percent of litigants in domestic violence and probate cases are self-represented.

In **Florida**, 80 percent of divorce cases have at least one self-represented litigant.

In **Hawaii**, 96 percent of tenants in landlord-tenant cases and 80 percent of homeowners in foreclosure cases do not have legal representation.

In **Minnesota**, 71 percent of family law cases have at least one self-represented party.

The LSC has survived repeated efforts to eliminate it, including those by the Trump administration.¹⁹ But its survival has come with costs: Congressionally imposed restrictions narrowly define what a legal aid lawyer can do to remedy people’s problems. For example, LSC-funded programs must turn away most undocumented immigrants and cannot pursue class actions or legislative relief for a systemic problem hurting hundreds or thousands of clients even if these legal tools—which are available to all other lawyers—could more effectively and efficiently fix the problem.²⁰

Although LSC-funded programs are the backbone of the nation’s legal services delivery system, fortunately, they are not the only resource for low-income Americans. The number of other nonprofit civil legal aid programs, pro bono efforts by the private bar, and law school or court-based programs has increased to help serve low-income and other underserved populations free of the LSC restrictions. Some programs provide general services, while others focus on particular populations or issues, such as people with disabilities and housing. Many programs provide self-help and informational services that benefit people of all incomes, which is crucial for the millions of moderate-

income Americans for whom legal fees are also out of reach. The rapidly developing field of legal technology is producing new digital legal tools aimed at lawyers, court systems, community organizations, and individual users.²¹ National organizations such as the National Legal Aid & Defender Association, the Self-Represented Litigants Network, and the National Center for Access to Justice provide essential support to many of these local programs.

But the still-fragmented civil justice delivery system and the patchwork of private philanthropy and local, state, and federal funds that supports it still leaves most of the more than 100 million people who Sandefur says have civil justice problems without the help they desperately need.²²

Considering the empirical evidence that people who get legal help achieve better outcomes than people who do not, the imperative for a comprehensive approach to civil justice reform is strong.²³ For example, one study has shown that expunging or sealing an old criminal record—a legal procedure that often requires legal help to complete—increases employment rates and wages, and reduces recidivism.²⁴ Another study reported that about two-thirds of low-income tenants in Massachusetts who were represented in their eviction cases remained in their homes, compared with only one-third of those who were unrepresented.²⁵ Moreover, one of the surest ways for domestic violence victims to break the cycle of violence is to get a restraining order against an abusive partner and legal custody of their children—often only possible with legal help.²⁶

Research also shows that government dollars spent on legal aid are good for society's bottom line. For example, legal aid in an eviction case can also conserve public dollars by preventing problems such as homelessness—which in turn can lead to arrest and incarceration—and attendant health issues that are costly and harmful to both the people involved and the public coffers.²⁷ Likewise, children can benefit from legal help that transitions them faster from the uncertainties of the foster system to permanent families, a process that also cuts costs in that public program.²⁸ Legal help also benefits individual and public health while driving down health care costs.²⁹ Similarly, reducing recidivism with legal tools such as expungement of eligible criminal records saves on law enforcement and related costs.³⁰

In short, everybody wins when the government, working with stakeholders from all parts of society, recognizes the good that legal aid can do to ensure fair resolution of civil justice problems and maximize available resources.³¹ The good news is that federal policymakers can build upon successful strategies already underway in states as well as age-old and Obama-era mechanisms supportive of civil legal aid that unlock federal dollars, align agency policy positions, partner to enforce civil laws, and incentivize innovation and research on the most effective methods for achieving civil justice reform.³² The federal government must advance civil justice for Americans and, in fact, has many tools at its disposal to achieve that goal.

Examples of federal responses to civil justice problems

Civil justice problems permeate all aspects of life for low-income and other underserved people. These problems animate public debates about who can access health care, avoid evictions, get a job, find relief from debt collection, and secure immigration status. Federal, state, and local governments grapple with these issues every day, often not knowing how much civil aid could help them achieve their goals. This section considers how civil legal aid improves outcomes for individuals affected by a handful of issues at the center of federal policymaking, the evidence base for the connection, and a sampling of ways that the federal government has incorporated civil legal aid into its suite of solutions.

Dr. Kerry Rodabaugh, a University of Nebraska Medical Center oncologist whose work with Nebraska Legal Aid was featured in a 2018 PBS NewsHour story, says she has seen attorneys help her patients time and again, and claims, “I can’t practice medicine without medical-legal partnership.” Dr. Rodabaugh describes a patient who was diagnosed with breast cancer and scheduled for a bilateral mastectomy: “[S]he just out of the blue canceled her surgery like three days before the procedure. The surgeon was very frustrated and said, ‘Ok forget it, I’m going to schedule another surgery.’ And he just went on with his procedures.” Luckily, the hospital’s social workers looked into the deeper issue. It turns out that the client had been evicted from her apartment. “So she said to herself ‘I can’t have surgery because I can’t live on the street in a post-op state,’” reasons Rodabaugh. “So we got our attorneys involved and they fixed it.” As a result, Rodabaugh’s patient was not evicted, she rescheduled her surgery, and her breast cancer was cured.³³

Improving health

Being uninsured directly correlates with poorer health. People without insurance tend to delay or forgo preventive and other medical care, which can lead to more serious conditions as well as unaffordable medical debt.³⁴ People of color and those who have low incomes are particularly likely to be un- or underinsured and are therefore less likely to receive necessary health care and be hit harder by medical expenses.³⁵

The good news is that civil legal aid can improve access to health care, reduce medical debt, and improve health outcomes. For example, a lawyer can secure health care by appealing erroneous administrative denials of benefits or insurance. This legal assistance ensures that government programs serve their intended beneficiaries and that private insurance companies follow the law. Likewise, embedding legal services in the health care setting through medical-legal partnerships (MLPs) can improve patient health by addressing substandard housing conditions such as mold, rodent, or insect infestations that increase the use of costly emergency room visits for asthma attacks.³⁶ MLPs apply an important public health strategy to resolving legal problems: prevention. Through collaboration with doctors—especially primary care physicians—civil legal aid lawyers can address legal issues that prevent health problems from escalating.

Not surprisingly, studies report that veterans who received legal services experienced significant improvements in mental health, housing, and income.³⁷ Additionally, by helping patients enroll in health insurance such as Medicaid, MLPs can help reduce the amount of debt that hospitals write off.

In the past decade, federal actors have ramped up the use of legal aid to help address social determinants of health. In 2014, the U.S. Department of Health and Human Services' (HHS) Health Resources and Services Administration (HRSA), which funds the community health centers that in 2018 provided primary health services to more than 27 million people, formally allowed civil legal aid as an “enabling service” for health centers.³⁸ HRSA also contracted with the National Center for Medical-Legal Partnership at George Washington University to strengthen MLPs and provide training and technical assistance to health centers. Other parts of HHS similarly permit states to use federal block grants such as the Temporary Assistance for Needy Families and Substance Abuse and Community Mental Health Block Grants to fund civil legal aid and MLPs.³⁹ In particular, MLP is emerging as a key strategy to support low-income people in recovery from substance use disorders.

In addition, the U.S. Department of Veterans Affairs (VA) operates more than 30 MLPs in 10 states, representing about 15 percent of VA medical centers; hosts nearly 140 legal clinics in VA medical centers; and maintains an internal taskforce to train and educate VA staff on MLPs through webinars and conference calls.⁴⁰

Yet these new federal efforts must be expanded so that more than a fraction of community health centers and VA medical facilities include legal help as an essential element of health care.

[Avoiding wrongful eviction](#)

Sociologist Matthew Desmond's Pulitzer Prize-winning book, *Evicted: Poverty and Profit in the American City*, argues that evictions and displacement cause, not just correlate with, poverty. He observes: “If incarceration had come to define the lives of men from impoverished black neighborhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out.”⁴¹ Desmond and other researchers amply document the increased risk of homelessness borne by the 90 percent of tenants who navigate eviction cases without a lawyer and the untold numbers who get wrongly pushed out without ever even making it to a courtroom.⁴²

Recent studies in Boston, Philadelphia, California, and New York confirm how a lawyer can prevent wrongful evictions and attendant hardships such as bad credit scores, lost furnishings, and kids bouncing from school to school. For example, researchers in Philadelphia concluded: “When tenants are unrepresented, they face case outcomes that can result in disruptive displacement 78 percent of the time. When they are represented, lawyers assist tenants in resolving the matter without this kind of disruptive displacement 95 percent of the time.”⁴³ A rigorous evaluation of the California Sargent Shriver Civil

Counsel Act’s housing pilot projects documented increased participation in the justice system, more settlements and fewer trials, improved efficiencies for the courts, and, most importantly, more tenants keeping their housing when they had representation.⁴⁴

Legal aid also protects scarce government dollars. According to a Boston Bar Association study, a large increase in state funding would be a “smart investment” because for every dollar spent representing families and individuals in housing court, the state would save \$2.69 in other services such as emergency shelter, health care, foster care, and law enforcement.⁴⁵

States and cities are leading reform efforts. New York City, New Jersey, and San Francisco have recently established a right to counsel for tenants facing eviction.⁴⁶ Similar legislation has been introduced in Massachusetts, Detroit, Cleveland, Connecticut, Los Angeles, and Philadelphia, while other jurisdictions are not far behind. And some state innovations provide legal help without lawyers. For example, an evaluation of New York City’s Navigators Program, which trains and supervises nonlawyers to help tenants in housing court, found that in the pilot project’s first year, it had a 100 percent success rate—none of the tenants assisted by a settlement navigator faced eviction from their homes.⁴⁷ Other assisted self-help approaches include JustFix.nyc, an exciting new tool designed to get landlords to address bad housing conditions. This online website streamlines tenant complaints and also connects tenants to lawyers when a tenant receives an eviction notice.⁴⁸ By identifying patterns among complaints, JustFix.nyc can target landlords who are repeatedly violating the law and facilitate more systematic solutions to tenant problems.

From a federal perspective, different agencies have weighed in on how legal help matters for the nation’s housing goals. For example, the Community Development Block Grant manual from the U.S. Department of Housing and Urban Development makes clear that states can use these funds for housing-related legal services.⁴⁹ The U.S. Interagency Council on Homelessness explains to its local partners that, “Legal services providers can play an essential role in removing . . . barriers to permanent housing and supportive services, helping to further accelerate progress toward preventing and ending homelessness in this country.”⁵⁰ Moreover, the VA considers legal services an essential tool in its centerpiece Supportive Services for Veterans Families program to eliminate homelessness among veterans.⁵¹ But much more can be done to embed legal help into these still-fragmented federal efforts to achieve the nation’s housing goals. The next administration will have the advantage of building on these efforts to leverage the power of legal aid to address the nation’s housing crisis.

Helping job seekers

People with court or criminal records—from unpaid traffic tickets to time served for felonies, whether 2 or 20 years old—have an unemployment rate of 27 percent.⁵² Commonly used credit and criminal background checks by employers often screen out applicants even before an interview. This is problematic on many fronts. Having

a criminal record reduces the likelihood of a callback for an interview by 50 percent for whites and 72 percent for African Americans.⁵³ Also troubling, studies show that significant numbers of prospective job candidates with arrest records get ruled out even though they were never convicted, either because they were innocent or because prosecutors opted not to pursue their case. For example, a recent Urban Institute study revealed that approximately 68,000 people in Washington, D.C., have criminal records but nearly half of those people whose court records are publicly available have no recorded conviction.⁵⁴ Whether arrested without conviction or convicted with time served, the consequences should not follow people for life.

Francesca, a 21-year-old single mother of two children, received a job offer at a major bank's call center, but she lost the offer when a background check found a noncriminal offense.

When she was 18 years old, she got a ticket for taking clothing valued at \$20 from a former employer. She knew it was a mistake and vowed not to do it again. She paid the fine thinking that the municipal ticket would not create a criminal record. Fortunately, a U.S. Department of Labor (DOL)-funded grantee referred Francesca to their legal aid partner, Legal Action of Wisconsin, for help. Within a month, a legal aid attorney got Francesca's municipal ticket case reopened and dismissed. After the attorney submitted proof of the dismissal to the state criminal investigation bureau, which cleared Francesca's criminal background report, the bank hired Francesca. After less than eight months on the job, Francesca earned a raise.⁵⁵

To further compound the problem, the number of jobs requiring an occupational license or government approval to practice a profession has ballooned over the past 60 years from about 1 in 20 to almost 1 in 4.⁵⁶ Many states lock people with certain categories of criminal convictions out of jobs by denying them licenses.⁵⁷

Between 70 million and 100 million people—as many as 1 in 3 adults—in the United States have some kind of criminal record, and nearly half of U.S. children have at least one parent with a record.⁵⁸ In many cases, these records involve minor offenses or are from many years ago. However, even in the case of those with more serious records, once people have served their time, they deserve a chance to move on with their lives and reenter the workforce.

Studies out of California and Michigan confirm that legal interventions such as expungement have a significant impact on employment and earnings and can reduce recidivism.⁵⁹ A recent major study from the University of Michigan found that people who get records expunged, on average, see their wages go up by more than 20 percent within just one year—the gain attributed mostly to unemployed people finding work and underemployed people finding steadier positions.⁶⁰ The researchers also found that only a tiny percentage of people who were eligible for an expungement actually got one, mostly because they did not know it was an option or how to do it and had no lawyers

to help them.⁶¹ Expungement increases individuals' access to housing, education, and employment opportunities while also increasing government tax revenues and reducing the cost of public assistance and the courts.⁶² But the sad reality is that few who are eligible will get the legal help they need to improve their chances of moving on with their lives, supporting themselves and their families, and contributing to society.

Federal civil justice reforms in this field should be bipartisan, building on the momentum generated from leadership that includes President George W. Bush's Second Chance Act, President Barack Obama's 20-agency Reentry Council,⁶³ and, more recently, President Donald Trump's support of the First Step Act.⁶⁴ To achieve those policy goals, over the past decade, more parts of the federal government have begun recognizing the importance of including civil justice tools in their responses. For example, the DOL's primary grant to develop programs that help people with criminal records secure employment and become self-sufficient requires inclusion of legal services in every successful grant application. The DOL also includes legal aid as a necessary supportive service for the nation's network of federally funded American Job Centers.⁶⁵ The DOJ funds the National Clean Slate Clearinghouse to help people with criminal records, legal service providers, and state policymakers find information on juvenile and adult criminal record clearance policies in all U.S. states and territories. In addition, the DOJ's National Institute of Justice recently funded a randomized control trial to learn how expungement stabilizes both employment and housing.⁶⁶ Yet again, these promising starts remain fragmented, thus diluting the full impact of an integrated federal approach so that those in need of civil legal help to remove obstacles to employment can get it.

Getting relief from debt collection

Approximately one-third of Americans have debt currently in collection.⁶⁷ While debt is common, seeking legal help to defend against improper collection is not, which is especially harmful when the collector uses unscrupulous means to collect or the debtor is a victim of identity theft or other financial crime. According to a recent American Civil Liberties Union study:

"Over 95 percent of debt collection suits end in favor of the collector, usually because alleged debtors do not mount a defense. In many cases, defendants did not know they had been sued. And, of course, collectors have little incentive to give proper notice to the defendants."⁶⁸

One study showed that the win rate of debt collectors dropped when consumers appeared in court and further dropped when they appeared with a lawyer.⁶⁹ Finding legal help to defend debt collection is critical to ensuring a fair and just resolution, but 94 percent of legal aid organizations reported that lack of funding and staff are challenges to debt defense work.⁷⁰ Systemic solutions should also be championed. Courts have played a leading role. For example, in 2014, New York state's then-chief judge, Jonathan Lippman, issued an order requiring debt owners to produce documentation

of the amount claimed at the time of filing, resulting in a dramatic drop in the number of debt lawsuits against New York consumers. In 2018, the Conference of Chief Justices and Conference of State Court Administrators similarly weighed in and passed “Resolution 4: In Support of Rules Regarding Default Judgments in Debt Collection Cases,” recommending similar reforms in all state courts.⁷¹

Both the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) have unlocked resources to help civil legal aid respond to this challenge. The FTC partners with legal aid to develop and disseminate consumer education and track complaints from legal aid offices to identify deceptive practices and illegal conduct directed at consumers. And in 2015, the CFPB released “Your Money, Your Goals,” an interactive toolkit designed to help organizations have conversations about money with the people they serve,⁷² and later released a guide for the toolkit with a section on integrating legal aid organizations.⁷³ The National Science Foundation funded a major research project to determine how assisted self-help can be best deployed to help the legions of people who find themselves sued in small claims court debt collection lawsuits.⁷⁴ While these steps are important to enhance the resources available to consumers caught in the cycle of debt collection, more is needed from the federal government to help individuals avoid the cycle in the first place or respond to it without destroying their financial health.

Securing immigration status

Due to increases in the number of longtime U.S. residents arrested and placed in removal proceedings and individuals requesting asylum at the southwest border, the pressures on the immigration court system are at an all-time high. Under current law, individuals in immigration court have the constitutional right to due process, but that does not translate to the right to appointed counsel for individuals who are indigent—including some who are victims of trafficking and other crimes—and cannot afford legal help.⁷⁵ According to one study, only 37 percent of immigrants were represented by counsel in immigration court even though they all must appear before an immigration judge and against a federal Immigration and Customs Enforcement trial attorney who is advocating for their removal from the country.⁷⁶ These individuals—including children as young as 3 years of age—must decipher complex immigration law, often with limited English language proficiency and lack of real knowledge of the American legal system.⁷⁷ Doing so without a lawyer has dramatic effects on outcomes. According to one national study, detained individuals represented by counsel in their immigration proceedings obtained a successful outcome 21 percent of the time, compared with only a 2 percent success rate for self-represented individuals. Among similarly situated immigrants, those who were represented were 15 times more likely to seek relief and 5 1/2 times more likely to obtain it.⁷⁸

Moreover, the harms are compounded for unrepresented children.⁷⁹ According to a 2018 study, 69 percent of child arrivals did not have attorneys.⁸⁰ Lawyers are critical to helping these children identify forms of legal protection for which they may be eligible.

Without lawyers and knowledge of relevant legal standards, children may be unable to adequately express why they seek to resettle in the United States or to provide sufficient detail and documentation to support their cases for protection. Legal representation aids both due process and court efficiency. Recognizing these risks, many immigration judges continue proceedings to allow these children more time to put forward their best evidence. This logic is corroborated by findings from the justice AmeriCorps Legal Services for Unaccompanied Children Program (jAC),⁸¹ a DOJ and Corporation for National and Community Service-funded program—launched under the Obama administration and ended by the Trump administration—that provided critical legal services to unaccompanied immigrant and asylum-seeking children in immigration court proceedings.⁸² A study of jAC concluded that legal representation significantly improved immigration court efficiency. Children represented by jAC lawyers were far more likely to attend their court hearings: The rate of in absentia removals for jAC cases was only 7 percent, compared with 77 percent for unrepresented cases. The study also concluded that jAC helped produce positive outcomes in unaccompanied children’s case: Children represented by a jAC lawyer were 71 percent more likely to have a successful outcome, compared with 18 percent for unrepresented children.

Unfortunately, many immigrants have little chance of getting meaningful legal help no matter how desperate their reasons for arriving at U.S. borders. For a system entirely run by the federal government—from the moment immigrants are picked up to the resolution of their legal status in this country—the opportunities to improve and enhance a fraught process are endless. But the Trump administration’s constant changes to the immigration system mean that avenues for relief are ever-shrinking and the few federal programs that support legal representation or know-your-rights presentations for unaccompanied children or other vulnerable immigrants remain at risk of elimination.

Conclusion

The Center for American Progress has long sought to make sure that civil legal aid is available to those who need legal help by promoting increased funding, expanding state access to justice commissions, increasing pro bono, and improving coordination among funders and other stakeholders.⁸³ It is time to capitalize on what works and move toward a civil justice system that delivers for people regardless of their wealth, race, or immigration status.

Ensuring an effective approach requires rethinking the ways people solve civil justice problems. The status quo continues to produce too many unfair trials, distrust in the justice system, and anti-poverty government programs that do not achieve the outcomes they should. The current ratio of 1 legal aid lawyer for 10,000 low-income people—a ratio that is lower still when also factoring in moderate-income people—is fundamentally unacceptable for the rule of law and dangerously undermines U.S. democracy.⁸⁴

America must do better and can do better.

Larger trends show the additional benefits of less lawyer-intensive and court-intensive solutions to legal problems.⁸⁵ Systemic reforms, court simplification, legal empowerment, technology tools, and nonlawyer advocates are all ingredients needed alongside making more lawyers available to create a more robust and diverse justice system that can allow individuals to resolve their civil justice problems in a variety of ways. Studies demonstrate that the collateral benefits include overall cost savings to families, communities, and government.⁸⁶

Nonprofits, courts, and private funders, sometimes in collaboration with government funders and innovators, are leading the way. States and municipalities, often thanks to federal funds and evidence-based policy guidance, are expanding options that do not require a lawyer's hands-on assistance and increase the number of lawyers pitching in to create civil justice reform.⁸⁷ These civil justice reformers are making progress, but their work is too often piecemeal and fragmented. America needs a coherent approach for developing, identifying, and scaling up what works for a 21st century justice system—with success dependent in large part on federal leadership.

While the current administration has failed to address the needs of the civil justice system, the next administration can repair the damage done and accelerate the long-overdue overhaul. The next president has an opportunity to make history by ensuring that leaders will unleash the power of civil justice reforms to help solve the nation's poverty problems and restore faith in the civil justice system. But doing so requires leadership from government policymakers who understand both the role the current broken system plays in exacerbating income inequality and the imperative to fulfill America's promise of assuring equal justice for all.

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Endnotes

- 1 All Rise for Civil Justice, "Safe at Home: Sonja — Rutherfordton, North Carolina," available at <https://www.allriseforciviljustice.org/stories/sonjas-story/> (last accessed August 2019).
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