



Finding legal representation for undocumented immigrants

Question: My counseling practice includes a growing number of pro bono clients, many of whom are undocumented immigrants from Mexico and Central America without legal counsel. Some are minors. Several have rather serious mental health diagnoses and have expressed heightened anxiety over being deported. Do they have the right to an attorney in deportation proceedings at no cost? Do you have suggestions regarding how they might find attorneys when they do not have financial resources?

Answer: Unlike defendants in criminal cases, undocumented immigrants have no absolute right to be provided with no-cost legal counsel in deportation proceedings. Such actions are considered to be civil cases, not criminal cases, so the Sixth Amendment provisions regarding right to counsel do not apply.

However, following a federal judge's 2013 order in a class-action lawsuit known as *Franco-Gonzalez v. Holder*, detainees in the states of Washington, California and Arizona who were determined to be seriously mentally ill were granted the right to appointment of free legal representation in deportation proceedings (see tinyurl.com/Franco-Gonzalez). Furthermore, as a result of policy changes by the U.S. Department of Justice Executive Office for Immigration Review and U.S. Immigration and Customs Enforcement, immigration courts outside of these three states have more recently expanded access

to legal representation for detainees who are indigent and seriously mentally ill.

Despite the ruling, be aware that minors do not have an automatic right to legal counsel in deportation proceedings. The 9th U.S. Circuit Court of Appeals decided Jan. 29 that the Constitution does not require the government to provide court-appointed legal counsel at government expense to a 15-year-old Honduran boy facing deportation. The boy and his mother fled their country and came to the United States following an incident in which a gang member pointed a gun at the boy's head in an attempt to force the boy, then 13, to join the gang (see tinyurl.com/CJLGvSessions and tinyurl.com/ACLUImmigrantChildren).

The outcomes involving represented versus unrepresented immigrants in deportation and other immigration proceedings are astounding. According to the American Immigration Council, among detained immigrants, those with legal representation were twice as likely as those without representation to obtain legal relief. Concomitantly, immigrants with legal representation who were never placed in detention were nearly five times more likely than those who were unrepresented to obtain the legal results they sought (see tinyurl.com/AICresearch).

Whether your clients have the right to legal counsel provided through government funds will be fact specific and may depend largely on their mental health diagnoses. Much discretion lies with the local judges handling these deportation

cases. If your clients are not currently detained, they may not have the same rights as those who are detained. However, you may wish to encourage your clients to obtain qualified immigration legal counsel as soon as possible.

The Executive Office for Immigration Review has a list of pro bono legal service providers by state at justice.gov/eoir/list-pro-bono-legal-service-providers. The government requires that this list be provided to individuals in detention facilities. Even if your clients are not currently detained, you might consider sharing this resource with them before a real legal problem develops. Some of the pro bono attorneys on the list may be willing to provide representation even if the clients are not in detention. The attorney list is updated quarterly. ♦

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