



NAIJ Position on Legal Representation in Immigration Court

May 5, 2021

The value of representation for noncitizens in the immigration court cannot be overstated. Access to representation before our immigration courts can lead to greater fundamental fairness in proceedings and protection of due process rights. NAIJ endorses efforts to provide greater access to representation and for free legal services to those appearing before the Immigration Court, especially for vulnerable populations such as the mentally impaired or juveniles, as well as for detainees. Money spent on improved access to representation is money well spent.

The Immigration Court faces a daunting challenge of an unprecedented backlog of over 1.3 million pending cases with limited resources, staff shortages and lack of up-to-date technology. Immigration Judges conduct trial-level hearings and are tasked with applying a highly complex body of law in an adversarial system and rendering life-altering determinations. The setting often involves high volume with unrepresented noncitizens. Those who appear in Immigration Court are often uneducated in our language, culture and law but are nevertheless required to present their claims unaided, while the DHS is represented by skilled government attorneys. This challenge becomes much more difficult when a respondent is detained. One study found that detained immigrants who were represented by counsel obtained successful outcomes in their cases at a rate 10 times higher than those who were unrepresented.¹ The difficulties of self-representation for members of a vulnerable group, such as juveniles or mentally impaired individuals, are equally, if not more, onerous.

NAIJ recognizes the value and importance of representation and supports efforts by immigration advocates and federal, state and local governments to expand access to counsel for immigrants. Representation helps safeguard due process in immigration court. Representation also allows people to make the appropriate decision about whether or not to fight their cases and to exercise and access the rights afforded to them under existing U.S. law.

Additionally, pro bono legal services providers fill an invaluable role for our Court by educating and guiding unrepresented individuals and providing direct representation when possible. Their efforts are a huge step towards leveling the playing field in our proceedings and helping Immigration Judges assure that justice is served in each and every matter that comes before us. Their presence supports judicial efficiency, as cases can be decided more expeditiously without compromising due process.

The National Association of Immigration Judges (NAIJ) is the collective bargaining representative for the nation's approximately 500 non-managerial Immigration Judges in 67 immigration courts and 2 adjudication facilities. NAIJ was founded in 1971 as a voluntary organization with the objectives of promoting independence and enhancing professionalism, dignity, and efficiency in the Immigration Court.

¹Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (December 2015), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review.