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OPINION | COMMENTARY

Immigrants Need Better Protection—From Their Lawyers

This area of law is prone to abuse. It's difficult to file a bar complaint after you've been deported.



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By Benjamin Edwards

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Walls and travel bans get most of the attention, but there is another serious immigration problem that few talk about: incompetent and predatory immigration lawyers. Such attorneys do enormous harm to immigrants, courts and the federal fisc. This complex problem won't go away overnight, but the Trump administration can limit the damage.

As a group, the private immigration bar now contains the worst lawyers in all of law. A 2011 survey of federal judges by Richard Posner and Albert Yoon found that, of all practice areas appearing in federal courts, immigration lawyers provided the lowest-quality representation. In another 2011 survey, 31 immigration judges in New York classified nearly half of the attorneys appearing before them as either inadequate or grossly inadequate. A 2015 study found that immigrants would be better off without an attorney than entrusting their fate to the bottom 10% of immigration lawyers.

Not all immigration lawyers are atrocious. Pro bono lawyers—who handle less than 10% of cases—win about 90% of the asylum claims they file. Law school clinics also deliver excellent results for their clients. The private immigration bar contains many fine lawyers, but there are far too many scoundrels. Clients struggle to find and afford lawyers who do honest and decent work.

Bad lawyers generate real costs—and not only for their clients. A predatory attorney might take an immigrant's money and file baseless asylum claims. These meritless claims clog judicial dockets and increase detention times for immigrants with legitimate cases. And the costs quickly add up: The federal government spends about \$158 a day to detain someone, according to a 2014 Government Accountability Office report.

The blame for America's inadequate immigration bar does not lie with vulnerable immigrant communities. No rational immigrant would knowingly shell out \$10,000 for an asylum claim destined for failure. Rather, immigrants make the common mistake of assuming that a valid law license means that a lawyer will do a decent job.

The free market has failed to weed out the worst immigration lawyers for a variety of reasons. For one, immigrants often do not understand complex administrative court processes or the details of immigration law, forcing them to turn to corrupt counselors. Community reputation provides only an imperfect guide. Predatory immigration lawyers sometimes enjoy good reputations in the community because the U.S. deports their victims. When only winners remain, immigrants never hear about the lost cases. State bars also struggle to police this behavior. It's difficult to file a bar complaint after you've been deported.

The best solution—a right to immigration counsel similar to the right to a criminal defense lawyer—probably can't garner enough support on Capitol Hill. Lawyers organized and funded like public defenders would be better positioned to police their own ranks. But this does not mean that Congress and the Trump administration should keep ignoring the problem.

In a forthcoming article in the Washington and Lee Law Review, I argue that requiring disclosure of immigration lawyers' track records could improve the market for representation. It almost certainly would drive some of the worst out of business. Who wouldn't shop around after discovering a lawyer ranked in the bottom 10% by client outcomes? Although no lawyer should be expected to win them all, immigrants should get nervous if their lawyer always loses.

When immigrants lack a way to differentiate between the shoddy and the skillful, the worst lawyers keep collecting cases and fees. This also means that the best immigration lawyers may struggle to make a living because their corner-cutting competitors depress the price of services. That's part of why many talented practitioners choose to abandon immigration law. This has led to a shortage of representation. One 2015 study found that only 37% of people in removal proceedings have lawyers.

The Justice Department already tracks lawyers practicing in immigration court by number. It should begin to collect, crunch and disclose their case outcomes. This would arm immigrants with the information they need to select competent counsel. It might also flag the fraudsters for state bar associations.

Increased disclosure is not a silver bullet. A world with informed clients will face different problems than the current system, and not all immigrants will be aware of the new database. Some lawyers would try to game the system and duck hard cases to protect their records. It might make it more difficult for clients with more challenging claims to secure representation. But these potential pitfalls aren't worse than the status quo so many immigrants already know.

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