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ACCESS TO COUNSEL IN CIVIL CASES

Submission to the United Nations Universal Periodic Review of
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- Program on Human Rights and the Global Economy, Northeastern University School of Law
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I. SUMMARY

1. Legal representation is fundamental to safeguarding access to the legal system. Yet, in the United States, millions of people who are poor or low-income are unable to obtain legal representation when facing a crisis such as eviction, foreclosure, domestic violence, workplace discrimination, termination of subsistence income or medical assistance, loss of child custody, or deportation. Indeed, in the U.S., only a small fraction of the legal problems experienced by low-income people—fewer than one in five—is addressed with the assistance of legal representation.¹
2. Studies indicate that lack of legal representation impairs the ability of low-income people to effectively navigate the court system and attain successful outcomes.² Represented parties enjoy statistically more favorable results in housing,³ family law,⁴ child welfare,⁵ small claims,⁶ and employment-related civil rights cases.⁷ Those who are represented by an attorney before administrative agencies governing such vital issues as social security, immigration, and unemployment also have higher success rates—in some cases up to two or three times higher—than those who are unrepresented in comparable cases.⁸ In immigration removal proceedings, representation can have a substantial impact on whether a person is able to remain in the country.⁹
3. A categorical right to counsel in civil cases, including in immigration removal proceedings, is not recognized under the federal Constitution.¹⁰ On the contrary, the U.S. Supreme Court has created a presumption against appointing counsel in any civil case in which physical liberty is not in the balance.¹¹ Compounding this problem, the Legal Services Corporation, which is the primary mechanism in the United States for providing civil legal services to people who are poor and low-income, is underfunded and severely restricted. The result is a crisis in unmet legal needs which disproportionately harms racial minorities, women, and those living in poverty, and which particularly impacts those in immigration proceedings.
4. The United States government has taken important steps since its last UPR to address the civil justice gap. But there is much more that it will need to do in order to fulfill its human rights obligations to ensure access to justice. Direct steps the government should take to increase access to counsel in civil cases include: supporting research into the impact of lack of counsel in civil cases; fully funding the Legal Services Corporation (LSC); lifting restrictions that prevent clients of LSC programs from securing their rights; strengthening the Department of Justice’s Access to Justice Initiative with respect to civil legal services, including immigration matters; supporting efforts to establish a civil right to counsel at the subnational level; and establishing a right to counsel in federal civil cases in which basic needs are at stake, including in immigration proceedings.
5. To fulfill its human rights commitments to ensure access to justice, the United States should therefore:
 - a. Increase its efforts to assure access to legal representation in civil cases;
 - b. Promote and support subnational efforts to establish a right to counsel for individuals in civil cases in which basic needs are at stake; and
 - c. Establish a right to counsel for individuals in federal civil cases where basic needs are at stake, including in immigration removal proceedings.

II. LEGAL FRAMEWORK

6. In the United States, there is no federal constitutional right to counsel in most categories of civil cases, including in immigration proceedings.¹² On the contrary, the U.S. Supreme Court has created a presumption against appointing counsel in civil cases in which physical liberty is not in the balance.¹³ In fact, in *Turner v. Rogers*, the Court declined to recognize a categorical constitutional right to counsel even in some civil cases in which lengthy prison sentences are imposed.¹⁴
7. Millions of people in the United States annually must navigate the court system without a lawyer because they are unable to afford legal representation.¹⁵ A large percentage of people who are unrepresented in fact would qualify for federal or state-funded legal aid but do not receive it due to the limited resources for legal providers.¹⁶ Furthermore, many low-income people are ineligible for these services because they do not meet the extremely low financial eligibility criteria relied on by the providers.¹⁷ Meanwhile, many categories of indigent immigrants in need of legal assistance are ineligible for federally-funded legal services altogether due to funding restrictions that condition eligibility for services on immigration status.¹⁸
8. During the 2010 UPR process, the U.S. Government *accepted, at least in part, several* recommendations related to and implicating access to counsel in civil cases, including:
 - 81. Take the necessary measures in favor of the right to work and fair conditions of work so that workers belonging to minorities, in particular women and undocumented migrant workers, do not become victims of discriminatory treatment and abuse in the work place and enjoy the full protection of the labour legislation, regardless of their migratory status (Guatemala);
 - The U.S. accepted this recommendation in part, noting that “Members of minority groups enjoy important anti-discrimination and labor protections. While labor laws apply to undocumented migrant workers, such individuals may not be entitled to certain types of remedies.”
 - 109. Promote equal socio-economic as well as educational opportunities for all both in law and in fact, regardless of their ethnicity, race, religion, national origin, gender or disability (Thailand);
 - 113. That further measures be taken in the areas of economic and social rights for women and minorities, including providing equal access to decent work and reducing the number of homeless people (Norway);
 - 114. Increase its efforts to effectively guarantee human rights of persons with disabilities, while welcoming the signing of the Convention and urging their prompt implementation (Costa Rica);
 - 116. Continue its intense efforts to undertake all necessary measures to ensure fair and equal treatment of all persons, without regard to sex, race, religion, colour, creed, sexual orientation, gender identity or disability, and encourage further steps in this regard (Israel);
 - 165. Further foster its measures in relation to migrant women and foreign adopted children that are exposed to domestic violence (Republic of Moldova);
 - 167. Take effective steps to put an end to child prostitution, and effectively combat violence against women and gun violence (Islamic Republic of Iran);
 - 185. Ensure that migrants in detention, subject to a process of expulsion are entitled to counsel, a fair trial and fully understand their rights, even in their own language (Guatemala);

- The U.S. accepted this recommendation “insofar as ‘entitled’ to counsel means that a migrant in removal proceedings in immigration court enjoys the right to counsel at his/her own expense, and ‘fully understand their rights’ means to have been provided information in a language they understand.”
- 195. Ensure the realization of the rights to food and health of all who live in its territory (Cuba);
- 196. Expand its social protection coverage (Brazil);
- 198. Reinforce the broad range of safeguards in favour of the most vulnerable groups such as persons with disabilities and the homeless to allow them the full enjoyment of their rights and dignity (Morocco);
- 214. Make greater efforts to guarantee the access of migrants to basic services, regardless of their migratory status (Uruguay).

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

9. The United States’ obligation to ensure equal and meaningful access to legal representation in civil cases where basic needs are at stake, including in immigration proceedings, derives, in part, from the Universal Declaration of Human Rights (Article 10); the Convention on the Elimination of All Forms of Racial Discrimination (Articles 5 and 6); and the International Covenant on Civil and Political Rights (Articles 2, 14, and 26). In 2014, both the Committee on the Elimination of All Forms of Racial Discrimination and the Human Rights Committee raised concerns about access to justice in the United States, and in particular access to legal representation in civil cases, including in immigration proceedings.¹⁹
10. Notwithstanding the progress outlined below, there remains a significant access to justice crisis in the United States. This crisis makes it impossible for millions of people -- including persons with disabilities, victims of domestic violence, and migrants -- to access meaningful legal representation necessary to protect their rights to fair and equal treatment, to reinforce the broad range of safeguards available to the most vulnerable groups, and to ensure the full enjoyment of all rights, including the rights to food, health, work and fair conditions of work, and social protection. (Recommendations 81, 109, 113, 114, 116, 165, 167, 185, 195, 196, 198, 214)
11. The U.S. government has engaged several initiatives to mitigate the lack of a right to legal representation in civil proceedings, including:
 - the Legal Services Corporation (“LSC”), established in 1974, as the primary means of providing civil legal aid for indigent persons in the U.S.;
 - the Access to Justice Initiative (“ATJ”), established in 2010 by the U.S. Department of Justice in response to what it recognized as “the access-to-justice crisis in the criminal and civil system;”²⁰ and
 - four additional programs to address concerns surrounding access to justice for immigrants, in particular: the Legal Orientation Program (“LOP”), the Legal Orientation Program for Custodians of Unaccompanied Alien Children (“LOPC”), the BIA Pro Bono Project, and the “Justice AmeriCorps” program to provide representation to unaccompanied immigrant children.

12. The Legal Services Corporation, the primary delivery system for federal legal aid for low-income and poor people in the United States, has experienced crushing budget cuts and imposition of onerous restrictions that limit who qualifies for representation and the kinds of services they may receive. Congressional appropriations for LSC have steadily decreased over the past several years, from \$420 million in 2010 to \$365 million in 2014.²¹ As a result of funding cuts, since 2010, LSC has been forced to eliminate more than 1,000 staff positions and close more than 30 offices.²² LSC-funded programs have nowhere near the funding and resources necessary to respond to the need for legal services.²³ LSC-funded organizations are also unable to meet the legal needs of immigrants and many low-income and poor clients because of restrictive federal rules governing who may receive their legal services and the types of activities they may engage in. Beyond those restrictions, LSC-funded organizations face a further challenge: the LSC appropriations legislation restricts and limits the activities of LSC grantees by extending the federal restrictions to *all* the grantees' activities, even those fully financed with non-LSC funding.²⁴ This has been called the "poison pill restriction" due to the impediments it places on the legal tools and activities available to organizations that take even a single dollar of LSC funding.²⁵
13. The Administration and the United States Senate Appropriations Committee have advocated the repeal of some restrictions on LSC funding. This effort made some progress in 2010, when the U.S. House of Representatives and U.S. Senate removed from the appropriations law the restriction that had barred LSC grantees from claiming, collecting, and retaining attorney fee awards.²⁶ However, the President's and Senate's efforts to remove the other restrictions on LSC funded entities in the 2011 appropriations bill failed, including an effort to repeal the "poison pill" restriction on LSC-funded entities. Despite President Obama's request to Congress to remove the poison pill restriction, and despite the harms caused by the restriction on non-LSC funds, the broad restriction remains.
14. ATJ is a positive new federal initiative in the United States with potential for expanding civil legal representation and responding to unmet civil legal needs, albeit in modest respects. ATJ has already improved access to civil legal services in some areas. For example, ATJ collaborates with other federal agencies to help them discover ways to incorporate civil legal services into their work as a means of advancing their respective agency missions. ATJ has launched the Legal Aid Interagency Roundtable ("LAIR"), which works with participating federal agencies to increase public awareness of the impact of civil legal aid in furthering federal agencies' efforts to increase access to education, employment, health, and housing, and to remove barriers that prevent access to federal programs.²⁷ In addition, ATJ has collaborated with other organizations and agencies to improve access to civil legal services and, importantly, to create an independent structure to produce research on civil legal aid, the dimensions and drivers of unmet legal needs, and the relative effectiveness of diverse methods and forms of civil legal aid.²⁸
15. Nevertheless, ATJ faces significant constraints and requires more funding and staff to have the impact that is needed. Currently, ATJ is operating at limited capacity without a permanent senior counselor and with insufficient staffing. With approximately six staff members, ATJ does not have the capacity to carry out its own research or analysis, to disseminate best practices, or to engage extensively in public education efforts to raise awareness around the importance of civil legal assistance in the United States. While positive, it is a modest intervention in its current form.

16. In addition to the LSC and ATJ, new federal efforts to improve access to justice for immigrants are positive and promising. However, they remain inadequate to address the civil justice gap in the United States. LOP and LOPC are both designed primarily as “know-your-rights” trainings and do not provide any right or even access to legal representation to individuals in immigration proceedings. Instead, they seek to educate people on how to better represent themselves. Although such training is helpful, it is no substitute for legal representation. The BIA Pro Bono Project and Justice AmeriCorps, on the other hand, do seek to provide legal representation to individuals in limited circumstances. While these projects are steps in the right direction, the scale of both must be expanded in order to make a difference for the vast majority of immigrants.
17. While overall immigration representation statistics have improved in recent years, in 2013, only 59% of immigrants in removal proceedings had legal representation.²⁹ Numbers for detained immigrants are much lower.³⁰ This is despite studies showing higher success rates for represented immigrants who are not in custody. A recent study in New York found that 74% of non-detained immigrants with counsel prevailed in their cases, compared to a mere 13% of non-detained immigrants without counsel.³¹
18. There have been notable efforts at the subnational level to improve access to justice in civil cases where basic needs are at stake, and the federal government should support their implementation. These include: the program instituted by California’s Sargent Shriver Civil Counsel Act, which is examining the cost effectiveness of civil counsel;³² the New York Immigrant Family Unity Project, which provides representation for detained immigrants facing deportation;³³ and the San Francisco pilot project to provide counsel in eviction cases.³⁴ Broader-scale efforts in New York City include a pending proposal to provide counsel in housing eviction cases³⁵ and a pilot program to ensure legal assistance in every foreclosure proceeding.³⁶ Few such pilot programs exist, though there is great need for more research into who is affected by a lack of meaningful representation in civil cases, especially in minority or vulnerable communities.
19. Additionally, federal funding can be tied to whether a state provides counsel in civil cases for vulnerable communities or in cases implicating basic human needs. For example, the Child Abuse Prevention and Treatment Act requires states accepting federal funds for child abuse programs to appoint a “guardian ad litem” for the child in all dependency cases.³⁷ A similar mechanism could be implemented with respect to the appointment of legal representation in other instances related to federal funding.
19. Specifically, to fulfill its human rights commitments and ensure meaningful and equal access to counsel in civil cases, including in immigration proceedings, the federal government should adopt the following recommendations:
 - Increase its efforts to provide meaningful access to legal representation in civil cases where basic needs are at stake, including immigration proceedings;
 - Promote and support subnational efforts to establish a right to counsel for vulnerable individuals in civil cases where basic needs are at stake; and
 - Establish a right to counsel for individuals in federal civil cases where basic needs are at stake, including in immigration removal proceedings.

III. CONCLUSION

20. By signing the Universal Declaration of Human Rights and by ratifying the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the United States committed itself to ensuring meaningful and equal access to justice. As part of its commitment, the United States must ensure access to counsel in civil cases, especially where basic human needs are at stake. To meet its obligations, the federal government should increase its efforts to provide meaningful access to legal representation in civil cases where basic needs are at stake, including immigration proceedings; promote and support subnational efforts to establish a right to counsel for vulnerable individuals in civil cases where basic needs are at stake; and establish a right to counsel for individuals in federal civil cases where basic needs are at stake, including in immigration removal proceedings.

ENDNOTES

1. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL NEEDS OF LOW INCOME AMERICANS 1 (Sept. 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.
2. See DOCUMENTING THE JUSTICE GAP, *supra* note 1, at 2; Rebecca L. Sandefur, The Impact of Counsel: An Analysis of Empirical Evidence, 9 SEATTLE J. SOC. JUST. 51, 69 (2010) [hereinafter Sandefur, Impact of Counsel].
3. Russell Engler, Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed, 37 FORDHAM URB. L. J. 37, 46–51 (2010); see also BOSTON BAR ASS'N, TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION 15 (Mar. 2012) [hereinafter THE IMPORTANCE OF REPRESENTATION], available at <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>. See generally D. James Greiner et al., The Limits of Unbundled Legal Assistance: A Randomized Study in a Mass. District Court and Prospects for the Future, 126 HARV. L. REV. 901, 927 (2013); NABANITA PAL, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCHOOL OF LAW, FACING FORECLOSURE ALONE: THE CONTINUING CRISIS OF LEGAL REPRESENTATION 8 (2011), available at http://www.brennancenter.org/sites/default/files/legacy/Facing_Foreclosure_Alone.pdf (documenting the high number of unrepresented litigants in foreclosure cases); URBAN INST., NATIONAL FORECLOSURE MITIGATION COUNSELING PROGRAM EVALUATION: PRELIMINARY ANALYSIS OF PROGRAM EFFECTS (2010), available at <http://www.urban.org/publications/412276.html> (documenting the positive outcomes for homeowners who receive assistance from housing counselors in foreclosure cases).
4. Engler, *supra* note 3, at 51–55; see also Laura K. Abel & Susan Vignola, Economic and Other Benefits Associated with the Provision of Civil Legal Aid, 9 SEATTLE J. SOC. JUST. 139, 151–53 (2010).
5. FIRST STAR ET AL., A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED AND NEGLECTED CHILDREN 8, 12 (2d ed. 2009), http://www.firststar.org/documents/Final_RTC_2nd_Edition.pdf (quoting A.E. ZINN & J. SLOWRIVER, EXPEDITING PERMANENCY: LEGAL REPRESENTATION FOR FOSTER CHILDREN IN PALM BEACH COUNTY (2008), http://www.chapinhall.org/article_abstract.aspx?ar=1467 (finding that children who are represented during dependency proceedings reach permanency more quickly, but that only sixty-three percent of states mandate the appointment of an attorney in these cases)).
6. Engler, *supra* note 3, at 55–58.
7. Amy Myrick, Robert L. Nelson & Laura Beth Nielson, Race and Representation: Racial Disparities in Legal Representation for Employment Civil Rights Plaintiffs, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 705, 710 (2012).
8. Engler, *supra* note 3, at 58–59; see also N.H. CITIZENS COMM'N ON THE STATE COURTS, REPORT AND RECOMMENDATIONS 10–11 (June 1, 2006), http://www.courts.state.nh.us/press/2006/cc_report.pdf (unrepresented individuals typically do an inadequate job of self-representation, resulting in compromised justice). One recent randomized study reached a different conclusion, finding that a particular clinic staffed by law students did not yield positive results. D. James Greiner & Cassandra Wolos Pattanayak, Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?, 121 YALE L.J. 2118, 2124 (2012). However, this study has been subject to critical scrutiny. See Symposium: What Difference Representation Makes, CONCURRING OPINIONS, <http://www.concurringopinions.com/archives/category/representation-symposium> (last visited July 13, 2014) (noting, among other things, that study's findings were not statistically significant, that it looked at representation by law students as opposed to trained advocates, that its scope was limited, and that it randomized offer of legal representation but not actual use).
9. Donald Kerwin, Revisiting the Need for Appointed Counsel, INSIGHT (Migration Policy Inst., Wash. D.C.), Apr. 2005, at 5, available at http://www.migrationpolicy.org/insight/Insight_Kerwin.pdf (finding success rates of 34 percent for represented, non-detained immigrants versus 23 percent of unrepresented, non-detained immigrants; 24 percent for represented detainees compared to 15 percent for unrepresented detainees; 39 percent for represented, non-detained asylum seekers versus 14 percent of unrepresented, non-detained asylum seekers; and 18 percent for represented, detained asylum seekers compared to 3 percent of unrepresented, detained asylum seekers). Other immigration studies demonstrate similar results. See, e.g. Asylum Denial Rate Reaches All Time Low: FY 2010 Results, a Twenty-Five Year Perspective, Transactional Records Access Clearinghouse (TRAC): IMMIGRATION(2010), <http://trac.syr.edu/immigration/reports/240/> (in 2010, 11 percent of asylum applicants without legal representation were granted asylum, compared to 54 percent of those with representation); Immigration 2015 Universal Periodic Review of the United States Stakeholder Report: Access to Counsel in Civil Cases

Judges, TRAC IMMIGRATION (2006), available at <http://trac.syr.edu/immigration/reports/160/> (between 1994 and 2005, 46 percent of represented asylum seekers received relief compared to 7 percent of unrepresented asylum seekers). See also *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, N.Y. Immigrant Representation Study Report Part 1, 33 CARDOZO L. REV. 357, 363–64 (2011) (finding that seventy-four percent of non-detained immigrants with counsel in a New York study prevailed in their cases, compared to only thirteen percent of non-detained immigrants without counsel); Donald Kerwin, *Charitable Legal Programs for Immigrants: What They Do, Why They Matter, and How They Can Be Expanded*, IMMIGR. BRIEFINGS (Thomson Reuters), No. 04-06 June 2004, at 1.

10. The U.S. Supreme Court has established a right to counsel in criminal cases. See *Gideon v. Wainwright*, 372 U.S. 335 (1963) (requiring counsel be appointed for indigent defendants in state court facing imprisonment due to felony charges); see also *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (requiring counsel for indigent defendants in state court facing imprisonment due to misdemeanor charges). However, the U.S. Supreme Court has not established a similar protection for individuals in the civil context.

11. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981) (finding no categorical right to counsel when termination of parental rights is at stake).

12. U.N. Comm. on the Elimination of Racial Discrimination, Reports submitted by States parties under article 9 of the Convention: Seventh to Ninth Periodic Reports of the United States of America, ¶ 61, U.N. Doc. CERD/C/USA/7-9 (Oct. 3, 2013) [hereinafter U.S. Government Report: CERD].

13. An “alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings.” 8 U.S.C. § 1229a(4)(A) (2012).

14. *Turner v. Rogers*, 131 S. Ct. 2507 (2011) (finding no categorical right to counsel for indigent contemnors facing jail time for failing to pay child support, at least where the plaintiff is neither the state nor represented by counsel).

15. See DOCUMENTING THE JUSTICE GAP, *supra* note 1, at 1–2. For example, 60% of litigants in New York’s family courts reported that they could not afford counsel. Engler, *supra* note 3, at 41 n.15 (citing OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS 1 (2005)). Similarly, 75% of litigants surveyed in New York housing courts in a 2007 study were unrepresented; of those who had lawyers, 71% relied on legal services and 28% had a private attorney. KIRA KRENICHYN, PH.D. AND NICOLE SCHAEFFER-MCDANIEL, M.A., CENTER FOR HUMAN ENVIRONMENTS, GRADUATE CENTER OF THE CITY UNIV. OF NEW YORK, RESULTS FROM THREE SURVEYS IN NEW YORK CITY HOUSING COURTS (Feb. 2007). A 2003 study in Chicago showed that only 5% of tenants were represented in eviction hearings. LAWYERS’ COMM. FOR BETTER HOUSING, NO TIME FOR JUSTICE: A STUDY OF CHICAGO’S EVICTION COURT 4 (2003). Homeowners facing foreclosure fare no better; in 2009 70% of New York homeowners facing foreclosure were unrepresented, and in 2010 nearly 93% of New Jersey homeowners facing foreclosure had no attorney on record. NABANITA PAL, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCHOOL OF LAW, FACING FORECLOSURE ALONE: THE CONTINUING CRISIS OF LEGAL REPRESENTATION 4 (2011), available at http://www.brennancenter.org/sites/default/files/legacy/Facing_Foreclosure_Alone.pdf. See also Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2027 (1999); BOSTON BAR ASS’N TASK FORCE ON UNREPRESENTED LITIGANTS, REPORT ON PRO SE LITIGATION 17 (1998), <http://www.bostonbar.org/prs/reports/unrepresented0898.pdf> (“Most of the unrepresented litigants [in the Boston Housing Court] reported that they wanted an attorney but felt they could not afford one.”); N.H. SUPREME COURT TASK FORCE ON SELF-REPRESENTATION, CHALLENGE TO JUSTICE: A REPORT ON SELF-REPRESENTED LITIGANTS IN NEW HAMPSHIRE COURTS 2 (2004), <http://www.courts.state.nh.us/supreme/docs/prosereport.pdf> (“A sample of self-represented litigants in New Hampshire showed that most of them were in court on their own because they could not afford to hire or continue to pay a lawyer.”).

16. DOCUMENTING THE JUSTICE GAP, *supra* note 1, at 1–2, 11 (finding that roughly one-half of the people who seek help from LSC-funded legal aid providers are denied service because of insufficient program resources).

17. LSC-funded services are available to those at or below 125 % of the poverty line. Income Level for Individuals Eligible for Legal Assistance, 77 Fed. Reg. 4909-01, 4909 (Feb. 1, 2012) (to be codified at 45 C.F.R. pt. 1611). In 2013, this translated to an income of \$29,438 for a family of four. Fact Sheet on the Legal Services Corporation, LEGAL SERVS. CORP., <http://www.lsc.gov/about/what-is-lsc> (last visited July 2, 2014) [hereinafter LSC Fact Sheet].

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18. Restrictions on Legal Assistance to Aliens, 45 C.F.R. §§ 1626.1, 1626.5 (2012).
 19. Comm. on the Elimination of All Forms of Racial Discrimination, 85th Sess., Aug 11-29, 2014, *Concluding Observations on the combined seventh to ninth periodic reports of the United States of America*, ¶¶ 18, 23, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014); Human Rights Comm. 110th Sess., Mar. 10-28 (2014), *Concluding Observations of the Human Rights Committee: United States of America*, ¶¶ 15, 16, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).
 20. The Access to Justice Initiative, DEP'T OF JUSTICE, <http://www.justice.gov/atj/> (last visited Oct. 9, 2013) [hereinafter DOJ, ATJ Mission].
 21. See LSC Funding, LEGAL SERVS. CORP., <http://www.lsc.gov/congress/lsc-funding> (last visited Sept. 5, 2014); see Funding History, LEGAL SERVS. CORP., <http://www.lsc.gov/congress/funding/funding-history> (last visited Sept. 5, 2014).
 22. John G. Levi, Opening Remarks at the 2013 White House Forum on Increasing Access to Justice (April 16, 2013), available at <http://www.lsc.gov/board-directors/chairmans-page/statements/lsc-chairman-john-levis-remarks-2013-white-house-forum>.
 23. Press Release, Legal Servs. Corp., Statement by John G. Levi, Chairman, Board of Directors, on New Federal Poverty Data (Sept. 13, 2011), available at <http://lsc.gov/media/press-releases/statement-john-g-levi-chairman-board-directors-new-federal-poverty-data>.
 24. Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity, 45 C.F.R. § 1610 (2014); see also ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR LAW & SOC. POL'Y, WHAT CAN AND CANNOT BE DONE: REPRESENTATION OF CLIENTS BY LSC-FUNDED PROGRAMS 4 (2009), available at <http://www.clasp.org/resources-and-publications/what-can-and-cannot-be-done-representation-of-clients-by-lsc-funded-programs>.
 25. FY 2011 Appropriations Process for Civil Legal Services, BRENNAN CTR. FOR JUSTICE, Mar. 1, 2011, available at <http://www.brennancenter.org/analysis/fy-2011-appropriations-process-civil-legal-services> [hereinafter BRENNAN CTR., FY 2011 Appropriations Process].
 26. BRENNAN CTR., FY 2011 Appropriations Process, *supra* note 25; Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, 123 Stat. 3034 (2009).
 27. U.S. DEP'T OF JUSTICE, ACCESS TO JUSTICE INITIATIVE, FOUR-YEAR ANNIVERSARY ACCOMPLISHMENTS 6–7 (2014) [hereinafter ATJ, FOUR-YEAR ANNIVERSARY ACCOMPLISHMENTS], available at <http://www.justice.gov/atj/accomplishments.pdf>; Eric Holder, U.S. Attorney Gen., U.S. Dep't of Justice, Remarks at the White House Forum on Increasing Access to Justice (Apr. 16, 2013), available at <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-1304161.html>; Tony West, Acting Assoc. Attorney Gen., Dep't of Justice, Remarks at the National Academy of Elder Law Attorneys 2013 Annual Conference (May 2, 2013), available at <http://www.justice.gov/iso/opa/asg/speeches/2013/asg-speech-1305021.html>.
 28. ATJ, FOUR-YEAR ANNIVERSARY ACCOMPLISHMENTS, *supra* note 27, at 9.
 29. U.S. DEP'T OF JUSTICE, EXEC. OFFICE FOR IMMIGRATION REVIEW, FY 2013 STATISTICS YEARBOOK Figure 1 (2014) [hereinafter FY 2013 YEARBOOK], available at <http://www.justice.gov/eoir/statspub/fy13syb.pdf>. Unfortunately these statistics do not include data on economic status. Presumably the poor are the most likely to proceed without representation, with the increasing rates of representation serving only to further marginalize the poorest immigrants.
 30. See AM. BAR ASS'N COMM'N ON IMMIGRATION, REFORMING THE IMMIGRATION SYSTEM: PROPOSALS TO PROMOTE INDEPENDENCE, FAIRNESS, EFFICIENCY AND PROFESSIONALISM IN THE ADJUDICATION OF REMOVAL CASES 5–8 (2010), available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf (finding that 84% of detained immigrants lacked counsel).
 31. Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings, N.Y. Immigrant Representation Study Report Part 1, 33 CARDOZO L. REV. 357, 363–64 (2011).
 32. Assemb. B. 590, 2009-2010 Reg. Sess. § 6 (Cal. 2009).
 33. See Press Release, N.Y. City Council Speaker Christine Quinn, Council Members & Immigrant Rights Groups Announce Pilot Program Providing Legal Counsel for Immigrants Facing Deportation (July 19, 2013), available at <http://council.nyc.gov/html/pr/071913nyifup.shtml>.

34. See JOHN AND TERRY LEVIN CTR. FOR PUB. SERV. AND PUB. INTEREST, SAN FRANCISCO RIGHT TO CIVIL COUNSEL PILOT PROGRAM DOCUMENTATION REPORT (2014), available at <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=49157>.

35. Sherlyn Aldas, Tenants Rally for Legal Reform, HUNTS POINT EXPRESS, June 11, 2014, available at <http://brie.hunter.cuny.edu/hpe/2014/06/11/tenants-rally-for-legal-reform/>.

36. See Chief Justice Jonathan Lippmann, The State of the Judiciary 2011: Pursuing Justice 7–9 (2011), available at <http://www.courts.state.ny.us/admin/stateofjudiciary/SOJ-2011.pdf>.

37. Ira Lustbader & Erik Pitchal, Implementation of the Right to Counsel for Children in Juvenile Dependency Proceedings: Lessons from Kenny A., 36 NOVA L. REV. 407, 408 (2012) (citations omitted).