

ARIZONA

# Migrants don't have a right to an attorney in immigration court. Democrats want to change that

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Democratic members of Congress want to establish, for the first time, guaranteed access to an attorney for migrants facing deportation from the United States.

Of more than 2 million pending cases before the U.S. immigration court system, approximately 1.3 million of the migrants do not have a lawyer to help them navigate the nation's complex immigration laws.

Unlike in the U.S. criminal justice system, any person in immigration proceedings does not have a constitutionally protected right to an attorney if they can't afford to pay for one. That means many migrants or asylum seekers will face well-trained government attorneys and judges on their own.

"It's like trying a death penalty case in a traffic court setting, because in traffic court you don't get a lawyer, right? It's not a criminal offense and so you go and you represent yourself as best you can," Laura St. John said. "But the consequences that are in place in immigration are so much greater than do I have to pay a ticket."

St. John is the legal director for the Florence Immigrant and Refugee Rights Project, a group that offers free legal representation to migrants held in detention facilities in central Arizona.

For legal and immigration advocates, having an attorney to represent them in court is the single biggest factor in whether someone with a pending immigration case in the U.S. is

successful with their claim, whether they are seeking asylum in the country or fighting a deportation order.

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The difference is especially stark for people held in immigration detention facilities. They are 10 times more likely to get relief with the help of an attorney, St. John said.

“The reality is that on any given day in Arizona, there's space for 3,000 adults in removal proceedings. And our office has approximately 30 people who work with those 3,000 adults,” she added. “It's just not possible for us to represent everybody.”

Reps. Pramila Jayapal, D-Wash., and Norma Torres, D-Calif., filed the Freedom to Fairness Act April 18 in the House, while Sens. Kristin Gillibrand, D-N.Y., and Cory Booker, D-N.J., filed companion legislation in the Senate.

“Due process and the right to an attorney are fundamental cornerstones of our legal system, and should be for all who have cases before it. By ensuring that all immigrants are able to access universal representation, we can take a major step toward restoring fairness, dignity, and justice to immigration proceedings,” said Jayapal, the ranking member of the House Judiciary Committee’s Subcommittee on Immigration Integrity, Security, and Enforcement.

But the bill’s chances of becoming law are complicated. While the legislation was introduced in both chambers by Democrats, they would need bipartisan support from Republicans, who hold the majority in the House.

And House Republicans have shown little interest in working with Democrats on immigration legislation. In fact, they have used their oversight powers to grill high-ranking officials, including the head of the office that oversees unaccompanied children in the U.S., as well as Homeland Security Secretary Alejandro Mayorkas about border security concerns.

“I want to fix our immigration system, but if we fix that first before we secure the border we’re just doing more of what you’ve done, which is to incentivize people to come without the security being present. And that’s just going to make it worse,” Rep. Mark Green, R-Tenn., chair of the House Committee on Homeland Security, told Mayorkas during a four-hour hearing at Capitol Hill on the same day the Fairness to Freedom Act was introduced.

The issue isn't going away, advocates say.

The Department of Justice's Executive Office for Immigration Review, which oversees the country's immigration court system, and U.S. Immigration and Customs Enforcement, which oversees detention facilities in the country, provides information to migrants on how to obtain legal assistance. But they are ultimately responsible for finding, and paying for an attorney.

Advocates have long pushed for universal representation within the immigration court system, mirroring the criminal justice system. More than 170 organizations created the Freedom to Fairness campaign to push for universal representation, a move these groups say would strengthen due process.

Annie Chen is the director for the Vera Institute of Justice's Advancing Universal Representation initiative. The group is leading the nationwide campaign jointly with the National Partnership for New Americans to pass the legislation introduced in April.

"I think what's so groundbreaking about this is that this is the first piece of federal legislation that would really create a nationwide system of legal defense for immigrants facing deportation," Chen said. "And that's important because the immigration detention and the immigration enforcement system is a federal system."

The Freedom to Fairness Act of 2023 would enshrine in U.S. law the right to an attorney, and would establish the Office of Immigration Representation, a standalone nonprofit organization equivalent to a public defender's office, where people in immigration proceedings would be guaranteed access to an attorney to represent them.

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Already about 55 local and state jurisdictions offer some type of legal assistance to people in immigration proceedings, according to the Vera Institute. They range from statewide programs in 10 states and the District of Columbia, to municipal programs in cities like San Antonio or Denver.

However, it is common for migrants to be transferred from one detention facility to another. So even if they qualify for assistance under one of the existing programs, they could lose access if they are transferred to a facility without legal assistance. The legislation would essentially expand these services nationwide.

“Part of this is also increased awareness of not only the need, but the impact of the fact that this is an achievable system and this is a solution that we know works and has been pioneered at the local and state level, and it continues to grow there,” Chen said.

The Florence Project, which is part of the Freedom to Fairness campaign, will be launching a pilot program in the next few months that will allow them to expand universal representation in Arizona and take up more clients. The program is funded by a \$10 million grant from billionaire philanthropist McKenzie Scott.

Under the pilot program, which is still in development, attorneys with the Florence Project will be able to take on all cases that come before them, rather than having to screen them and choose the strongest cases, St. John said.

Establishing a guaranteed right to an attorney would help clear other hurdles that attorneys and legal aid groups face in accessing their clients in detention, according to St. John.

In February, a district court in Washington ruled that ICE was holding the Florence Project’s clients at the Florence Correctional Facility in “unconstitutional conditions of confinement” for failing to provide confidential spaces for detainees to meet with their attorneys, in violation of the due process clause of the Fifth Amendment, according to court records.

It was part of a lawsuit that Florence Project and several other organizations filed against ICE and the Department of Homeland Security challenging the ability of attorneys to meet with their clients in detention facilities in four states, including Arizona.

“We have clients who tell us that they have not been able to tell us all aspects of their case, that they're uncomfortable discussing their trauma or sometimes the criminal histories in front of other people,” St. John said about why they filed the lawsuit. “And it creates real barriers to getting the information that we require to represent them effectively.”

The court issued a preliminary injunction in February requiring ICE to install by April 3 six private visitation rooms at the Florence Correctional Facility or to set up one confidential telephone space for every 25 detainees.

ICE filed a motion to the preliminary injunction at the end of March asking for an additional 120 days to comply, citing procedural and contracting delays to secure the funds and install the facilities.

**Politics:** President Biden applauds Canada for 'opening new, legal pathways' for migrants

The court partly disagreed with their motion and instead gave them four weeks, until May 15, to comply with the injunction. It required ICE to provide prepaid phones to the Florence Project's clients at the Florence Correctional Facility until the confidential spaces were set up inside the facility.

St. John said creating a federal guarantee to representation in immigration proceedings would help ensure that access to counsel is enforced for all people held in detention.

“It would be absolutely unheard of in criminal custody for there to be no way for an attorney to set up a phone call with one of their clients if there was something that was urgent,” she said. “And yet, that's the reality we face on a day to day basis in our immigration representation.”

*Have any news tips or story ideas about immigration in the Southwest? Reach the reporter [atrafael.carranza@arizonarepublic.com](mailto:atrafael.carranza@arizonarepublic.com), or follow him on Twitter at [@RafaelCarranza](https://twitter.com/RafaelCarranza).*

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