

The Fairness to Freedom Act Summary

The Fairness to Freedom Act establishes the right to legal representation in removal proceedings to ensure that no one faces detention and deportation without access to counsel.

Background

The Trump administration's mass detention and deportation agenda has created a crisis of due process and family separation. Its sweeping, indiscriminate raids and tactics are tearing communities apart, removing people from their workplaces, and taking parents away from their children, giving them little to no opportunity to legally defend their rights.¹ Unlike in the criminal legal system, people in the immigration legal system facing deportation do not have a right to a lawyer if they cannot afford one. As a result, most noncitizens must defend themselves alone in immigration proceedings, while the government is represented every time.

Legal representation is a proven measure that promotes due process. Studies have shown that people in detention with representation are up to 10.5 times more likely to obtain relief from deportation than those without and that detained people with representation facing removal are 3.5 times more likely to be granted bond, enabling their release from detention.²

¹ Ted Hesson and Alexandra Ulmer, "Trump Launches Sweeping Border Crackdown, Mass Deportation Push," Reuters, January 21, 2025, <https://www.reuters.com/world/us/trump-declare-national-emergency-border-trump-official-says-2025-01-20/>.

² Ingrid 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), 49-50, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review; Emily Ryo, "Detained: A Study of Immigration Bond Hearings," Law & Society Review (2016), USC Law Legal Studies Paper No. 15-31, USC CLASS Research Paper No. CLASS15-29, Criminal Justice, Borders and Citizenship Research Paper No. 2628962, 1, <https://ssrn.com/abstract=2628962>.

Summary

The Fairness to Freedom Act would:

- › **Establish a right to representation in removal proceedings at government expense for people who cannot afford it.** The bill amends Section 292 of the Immigration and Nationality Act ([8 U.S.C. § 1362](#)) to provide that any person in any removal, exclusion, deportation, bond, or expedited removal proceeding who is financially unable to obtain representation in that proceeding is entitled to representation at government expense.
- › **Ensure early, continuous, and full-scope representation.** The act requires counsel to be appointed at or before the start of proceedings and provided continuously at every stage of proceedings, including on any related matters before United States Citizenship and Immigration Services (USCIS) or in state or federal court, until all proceedings conclude.
- › **Enable representatives to provide high-quality, holistic representation.** Representation under the act includes interpretation and translation services, and other services necessary for effective representation. The act also requires the government to automatically produce all information in its custody pertaining to the person in proceedings, including their “A-file.”
- › **Require the government to facilitate access to counsel for people in its custody.** The act would require the government to ensure that counsel can meet with clients detained in Department of Homeland Security (DHS) or Department of Health and Human Services (HHS) custody in a confidential setting within the first 12 hours of the person’s detention.
- › **Establish the Office of Immigration Representation to ensure high-quality, universal representation.** The act creates the office as an independent nonprofit to provide high-quality legal representation to all financially eligible people. The office will establish and maintain standards for the provision of high-quality, full-scope representation for people facing removal, including ongoing training and professional development standards, and set reasonable, manageable, and sustainable appointed counsel caseloads.
- › **Work with existing state and locally funded removal defense programs to provide universal representation.** The office may provide grants or reimbursements to states and municipalities that fund representation for people facing removal, prioritizing those where representation is provided without exception for past interaction with the criminal legal or immigration systems, or similar exceptions. The office may also establish immigration public defender organizations, contract with community defender organizations, and establish private attorney panels to ensure universal representation.
- › **Representation under the bill is not limited to the interior.** The office’s representation plans for limited representation at ports of entry, and may include Attorney of the Day, attorney fellowship models, and other models to provide limited representation and support coordination of case transfers and referrals for people who are released or transferred within DHS or HHS.

Legislative Outline

The Fairness to Freedom Act

Title I: Guaranteeing the Right to Counsel

Sec. 101

- › This section establishes the right to representation, at government expense for those unable to afford it, for all people facing removal.
 - The bill establishes this right by amending Section 292 of the Immigration and Nationality Act ([8 U.S.C. § 1362](#)).
 - People facing removal include those in:
 - removal proceedings in immigration court;
 - expedited removal, administrative removal, and reinstatement of removal proceedings; and
 - parole determination proceedings for nonimmigrant arrivals.
 - The right extends to representation in related proceedings, including:
 - bond, parole, and mandatory detention proceedings;
 - related matters before state courts;
 - related matters before federal courts; and
 - related matters before USCIS.
- › Representation includes counsel, interpretation, and translation services and other services necessary for effective representation.
- › Appointed counsel is provided continuously at every stage of proceedings, from the initial appearance before any official with adjudicatory authority through proceedings before the immigration courts, Board of Immigration Appeals, federal district courts, federal courts of appeal, and the U.S. Supreme Court, as well as on any related matters, until all proceedings conclude.
- › For people who are or have been detained by DHS or HHS, the right to appointed counsel starts when the person is placed in custody, regardless of whether they have been formally placed in proceedings that may result in removal, or when a Notice to Appear or other document initiating proceedings is issued, whichever occurs first.
- › The bar for establishing financial eligibility is low and can be met by a sworn statement attesting to insufficient resources and income to obtain qualified counsel.
- › A represented person and their counsel have a right to, and automatically receive, discovery of all information pertaining to that person in the possession of DHS and HHS, including their “A-file” and any record of proceedings. Proceedings cannot commence until these documents have been provided and the person and their counsel have had time to review them.
- › Appointed counsel may be waived by the person if their waiver is knowing and voluntary; they understand the nature of the charges and the possible defense and outcomes; and they are able to conduct their own defense.
- › DHS and HHS must facilitate access to counsel for people in their custody and must ensure that counsel can meet with clients in a confidential setting within the first 12 hours of the person’s detention. If DHS or HHS fail to do so, statements made by the person may not be introduced into evidence except on a motion by the person or appointed counsel, who are also entitled to a continuance of proceedings.
- › If the government fails to provide counsel as required, proceedings are terminated with prejudice.

Sec. 102

- › Seeking or receiving legal representation cannot be considered for public charge purposes.

Title II: Office of Immigration Representation

Secs. 201–202

- › This section establishes the Office of Immigration Representation as an independent, congressionally created nonprofit to provide high-quality legal representation to all eligible people in proceedings listed in Title I.

Secs. 203–209

- › The office is overseen by an appointed board of directors consisting of people with significant experience defending people in removal proceedings. The board appoints a director of immigration representation and establishes local immigration representation boards to provide appointed counsel.
- › The office will establish and maintain standards for the provision of high-quality, full-scope representation for people facing removal, including ongoing training and professional development standards, and set reasonable, manageable, and sustainable appointed-counsel caseloads.
- › Local boards shall submit to the office a plan to provide representation within their area. Each local plan may provide grants or reimbursements to states and municipalities that fund representation for people who are facing removal and are unable to afford representation. A local plan may also establish immigration public defender organizations, contract with community defender organizations, and establish private attorney panels to ensure universal representation.
- › Each local plan shall, as feasible, prioritize reimbursements to states, counties, and localities that publicly fund legal representation for people subject to proceedings under Title I without exception for past interaction with the criminal legal or immigration systems or similar exceptions.
- › Local plans covering the U.S.–Mexico border region must include legal representation and may include Attorney of the Day, attorney fellowship models, and other models to provide limited representation at the border and coordinate case transfers and referrals for people who are released or transferred within DHS or the Office of Refugee Resettlement.

Sec. 210

- › This section establishes the Immigration Representation Advisory Board, consisting of a representative from the immigration public defender organizations, community defender organizations, and private attorney panels, to advise the office on the provision of representation.

Title III: Authorization of Appropriations

Sec. 301

- › This section allocates funding for the Office of Immigration Representation to provide representation for all eligible respondents consistent with the above.

Sec. 302

- › This section implements a minimum funding provision tied to immigration enforcement funding levels to ensure the office always has the resources necessary to provide high-quality representation in all cases.

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