

# Access to Justice in the United States: Ensuring Meaningful Access to Counsel in Civil Cases\*

## ISSUE SUMMARY

Legal representation is fundamental to safeguarding fair, equal, and meaningful access to the legal system. In the United States, millions of poor and low-income people must navigate the civil court system without legal representation, facing potential crises including termination of tenancy, loss of child custody, and immigration removal, simply because they cannot afford a lawyer.<sup>1</sup>

The U.S. Supreme Court has recognized a right to counsel in criminal cases. No such right, however, is recognized in the civil context.

Federal programs to provide civil counsel are underfunded, and have severe restrictions on the services they can provide.<sup>2</sup> The Legal Services Corporation (LSC) was created to promote equal access to justice and provide grants for civil legal assistance to low-income Americans. Annual federal funding for LSC is currently at its third-lowest level ever in inflation adjusted dollars,<sup>3</sup> despite the fact that the population eligible for assistance has grown to an all-time high.<sup>4</sup>

Moreover organizations, like Maryland Legal Aid, which take even a single dollar of LSC-funding face significant restrictions on all of their activities,<sup>5</sup> including the clients they can serve and the legal advocacy tools they can bring to bear to address clients' problems. Organizations that receive any LSC-funding are barred from representing undocumented and even some documented immigrants, the incarcerated, and certain public housing residents.<sup>6</sup> Clients they are permitted to represent are prevented from accessing important legal remedies, strategies and options available to others who can pay for lawyers because LSC-funded organizations cannot file class actions, initiate legislative activity, or do grassroots organizing. The result is a crisis in unmet civil legal need, which disproportionately impacts racial, ethnic and national minorities, and women.<sup>7</sup>

## LEGAL FRAMEWORK

UDHR Article 10; ICCPR Articles 2, 14, and 26; CERD Articles 5 and 6.

## UN TREATY BODY RECOMMENDATIONS

In the past year, the UN Committee on the Elimination of All Forms of Racial Discrimination and the UN Human Rights Committee have both raised concerns about access to justice in the United States, and in particular access to legal representation in civil cases, including in immigration proceedings.<sup>8</sup> Additionally, in its most recent review, the UN Committee Against Torture urged the United States to “guarantee access to counsel” in immigration removal proceedings.<sup>9</sup>

## PROGRESS MADE SINCE FIRST UPR

Since its first UPR, the United States has made important, but limited, progress in improving access to civil counsel for indigent litigants. In 2010, the U.S. Department of Justice created the Access to Justice Initiative and the Legal Aid Interagency Roundtable, which together work to integrate civil legal aid into federal activities.<sup>10</sup> In 2014, the Administration created a new program called Justice AmeriCorps. The program works to provide legal services to a limited number of unaccompanied minors in immigration proceedings.<sup>11</sup> While these initiatives are promising, they do not fully address the civil justice gap. Every year, millions of people in the United States still must navigate the civil justice system on their own when facing a crisis, due to their inability to afford legal representation.<sup>12</sup>

## SUGGESTED QUESTION FOR THE REVIEW

Please provide information on measures the federal government is taking to address the civil justice gap, including measures to fully fund and ease restrictions on the federal Legal Services Corporation, expand and make permanent the Access to Justice Initiative, and establish a right to counsel in civil cases where basic human needs are at stake, including in civil immigration removal proceedings.

## SUGGESTED RECOMMENDATIONS

In its efforts to ensure equal and meaningful access to justice, the United States should:

- make the U.S. Department of Justice's Access to Justice Initiative permanent and expand its capacity;
- support full funding for the federal Legal Services Corporation and the removal of restrictions that prevent legal services lawyers from providing necessary services;
- prioritize the establishment of a right to legal counsel for immigrants, including unaccompanied minors, in civil immigration proceedings and indigent litigants in other federal civil cases where basic human needs are at stake; and
- support state-level efforts to establish a right to counsel in certain civil cases.

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<sup>1</sup> Legal Services Corporation, *Documenting the Justice Gap in America* 24, (Sep. 2009), available at [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

<sup>2</sup> *Id.* at 24.

<sup>3</sup> *LSC Funding*, Legal Services Corporation, <http://www.lsc.gov/congress/lsc-funding> (last visited Feb. 18, 2015); *Funding History*, Legal Services Corporation, <http://www.lsc.gov/congress/funding/funding-history> (last visited Feb. 18, 2015).

<sup>4</sup> Legal Services Corporation, *LSC FY 2015 Budget Request Sent to Congress*, (Mar. 4, 2014), available at <http://www.lsc.gov/media/press-releases/lsc-fy-2015-budget-request-sent-congress>.

<sup>5</sup> Maryland Legal Aid's entire budget of approximately \$24 million dollars is affected by LSC restrictions, even though LSC-funding comprises less than 16% of the total budget.

<sup>6</sup> *About Statutory Restrictions on LSC-funded Programs*, Legal Services Corporation, <http://www.lsc.gov/media/fact-sheets/about-statutory-restrictions-lsc-funded-programs> (last visited Feb. 18, 2015).

<sup>7</sup> Comm. on the Elimination of All Forms of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶22, U.N. Doc. CERD/C/USA/CO/6 (May 16, 2008); Columbia Human Rights Institute, *Equal Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases, Including Immigration Proceedings* 3, (July 2014), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/equal\\_access\\_to\\_justice\\_-\\_cerd\\_shadow\\_report.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/equal_access_to_justice_-_cerd_shadow_report.pdf).

<sup>8</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, para. 18, 23, U. N. Doc. CERD/C/USA/CO/7-9 (Sep. 25, 2014); International Covenant on Civil and Political Rights, Concluding observations on the fourth periodic report of the United States of America, para. 15, U. N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

<sup>9</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the third to fifth periodic reports of United States of America, para. 18, U.N. Doc. CAT/C/USA/CO/3-5 (Nov. 20, 2014).

<sup>10</sup> *Legal Aid Interagency Roundtable Toolkit*, United States Department of Justice, <http://www.justice.gov/atj/legal-aid-interagency-roundtable-toolkit> (last visited Feb. 18, 2015). See also *Access to Justice*, United States Department of Justice, <http://www.justice.gov/atj> (outlining the Initiative's mission and activities) (last visited Feb. 18, 2015); Access to Justice Initiative, Department of Justice, *Four-Year Anniversary Accomplishments*, (March 2014), Access to Justice Initiative, Department of Justice, *Three-Year Anniversary Accomplishments*, 5 (March 2013), <http://www.justice.gov/atj/accomplishments.pdf>.

<sup>11</sup> *justice [sic] AmeriCorps Legal Services for Unaccompanied Children*, Corporation for National and Community Service (July 22, 2014), <http://www.nationalandcommunityservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-ameri-corps-legal-services>.

<sup>12</sup> Maryland Legal Aid adheres to federal regulations involving LSC-funded recipients. Consistent with those regulations, it did not participate in preparing nor does it join the sections with questions and recommendations that follow.