Deportation Without Representation

In deciding who may stay and who must leave this country, the deportation process for immigrants tolerates unfairness at every turn. Current laws have denied basic due process protections to people held in immigration detention. And now, a new report in the Cardozo Law Review reveals a severe shortage of competent legal assistance for tens of thousands facing deportation. The study examines cases in New York, but New York is hardly unique in this failing.

The report surveyed judges in five immigration courts and found shoddy lawyering widespread. According to the judges’ responses, in nearly half the New York cases, immigrants who had lawyers received inadequate representation. In 14 percent of cases, they said the attorneys’ preparation and knowledge of the law and the facts were “grossly inadequate.”

Worse, a huge number of immigrants in New York have no representation at all. Although poor defendants in criminal courts are entitled to court-appointed lawyers, people in immigration courts are not. Over all, immigrants appeared in court without a lawyer in nearly 15,000 cases (27 percent of the total) between October 2005 and July 2010. About two-thirds of immigrants in detention were lawyerless. Other jurisdictions provided even less access to counsel: 79 percent of those arrested and transferred to immigration detention in other states lacked attorneys.

As in other areas, people with lawyers fared better. About 67 percent of those with lawyers during the period reviewed were allowed to stay, while only 8 percent of those without counsel avoided deportation.

These problems are but a subset of a much broader legal services crisis that is also forcing a soaring number of Americans to go to court without a lawyer in civil matters like home
foreclosures, evictions and child support cases. Perversely, Congress has responded to the growing need for legal help by slashing the budget of the federal Legal Services Corporation. Government-financed legal assistance for people fighting deportation is nowhere on the radar.

Even so, some improvements are possible. The review of all deportation cases before the immigration courts announced last month by the Obama administration should be extended to cases in the federal appellate courts. Dismissing the many cases at that level that fall outside the administration’s focus on immigrants who have committed serious crimes or pose national security risks could free up competent lawyers for more serious cases. Private foundations and bar associations could also help improve representation by creating programs that put young lawyers to work full time on immigrant issues.