

June 26, 2013

The Honorable Harry Reid  
Majority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

**RE: Protect Access to Counsel in S.744 for those who are Unable to Represent Themselves and Oppose Grassley Amendment 1306, and Coburn Amendments 1350, 1351, 1616 and 1689.**

Dear Majority Leader Reid, Minority Leader McConnell, and Senators:

We write to you as a broad coalition of disability rights organizations to urge you to support Section 3502 of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, which helps ensure that those with serious mental disabilities and other particularly vulnerable individuals will have necessary legal assistance. We ask you to ensure that this important provision is kept intact by opposing Grassley Amendment 1306, and Coburn Amendments 1350, 1351, 1616 and 1689, as well as any other amendment or effort that would weaken or limit this provision.

Navigating complex immigration proceedings is extremely challenging for anyone facing removal proceedings, but for the most vulnerable among us, the challenges can be insurmountable. People with significant mental disabilities, for example, may be unable to understand the charges against them or to provide the court with basic information relevant to their cases—yet, currently they can be detained and deported without the assistance of a lawyer.

Mark Lyttle, a native-born U.S. citizen of Puerto Rican descent with mental disabilities, was deported to Mexico in 2008 after spending 51 days in Georgia's Stewart Detention Center, unable to contact his family. While detained, he attempted suicide. Meanwhile, his family contacted jails and hospitals and even scanned obituaries in search of him. At his immigration court hearing, no attempt was made to assess whether he was able to proceed unrepresented. On his own, he was ordered deported to Mexico, despite the fact that he had never set foot in the country and spoke no Spanish. Mr. Lyttle, an American citizen, was sent across the border to Mexico in a prison jumpsuit with nothing but three dollars in his pocket. He endured more than four months of living on the streets and in the shelters and prisons of Mexico, Honduras, Nicaragua, and Guatemala.<sup>1</sup>

Mr. Lyttle's experience demonstrates the oftentimes tragic results of failure to provide legal assistance for people who are unable to represent themselves. So much hinges on the outcome of an immigration case—a deportation can result in permanent separation from family and can even be life-threatening, as in Mr. Lyttle's case. Appointing counsel for particularly vulnerable

---

<sup>1</sup> William Finnegan, *The Deportation Machine: A Citizen Trapped in the System*, THE NEW YORKER, Apr. 29, 2013, at 24.

individuals, like those with disabilities, would provide important safeguards to prevent such tragedies in the future. It would also make the immigration system far more expeditious and cost effective, with significant savings for taxpayers. The cost per detainee is about \$166/day, or about \$60,000/year. The government wastes money each extra day that a vulnerable detainee spends in jail while judges, social workers, and others look (often in vain) for a lawyer to represent them for free. That detention cost exceeds the cost of legal representation.

For example, Jose Antonio Franco-Gonzalez, an immigrant from Mexico with significant mental disabilities, lost half a decade of his life in immigration jail. Mr. Franco was not able to speak until he was six or seven, does not know his birthday or age, has trouble recognizing numbers and counting, and cannot tell time. In 2005, while Franco was in immigration custody, a government psychiatrist found him clinically incompetent, and an immigration judge closed his case because Franco could not understand the proceedings. Unrepresented by counsel, he was remanded back into immigration custody, where he was forgotten. He spent another four years behind bars—at a cost of almost \$300,000 – before he was found by *pro bono* attorneys who filed a lawsuit to secure his release. If the government pocketed the amount that it spent keeping Franco in detention, it could have paid a lawyer for about six years (estimating an annual salary of \$50,000/year); a full-time lawyer could represent dozens, perhaps hundreds, of immigrants over that period of time.

Approximately 80 percent of immigration detainees have no counsel due to insufficient resources. According to the National Association of Immigration Judges, unrepresented individuals are more likely to appeal their cases, ask for relief for which they are not eligible, and request endless continuances. When individuals represented by attorneys appear before them, however, they “are able to conduct proceedings more expeditiously and resolve cases more quickly.” As a result, appointment of counsel in more removal cases would “increase court efficiency and ultimately result in cost savings.”<sup>2</sup> The *New York Times* also recently reported that Department of Justice officials agree that appointed counsel would save money overall by reducing expensive prolonged detention for immigrants with disabilities.<sup>3</sup>

Section 3502 would not only help to guarantee fundamental fairness in immigration proceedings, but would also ensure that our new immigration system is more just and efficient – at a net savings for taxpayers. Thus, we strongly urge you to keep Section 3502 intact and oppose any amendments or other efforts that would weaken the counsel provisions in S.744.

If you would like any additional information, please feel free to contact Jim Preis of Mental Health Advocacy Services at 213-389-2077 or [jpreis@mhas-la.org](mailto:jpreis@mhas-la.org). We applaud the Senate for working to create a more just, efficient, and humane immigration system, an achievable goal which appointed counsel will greatly facilitate.

Sincerely,

---

<sup>2</sup> Letter from Dana Leigh Marks, President, National Association of Immigration Judges (Mar. 22, 2013).

<sup>3</sup> Julia Preston, *In a First, Judge Orders Legal Aid for Mentally Disabled Immigrants Facing Deportation*, THE NEW YORK TIMES, Apr. 24, 2013, available at <http://www.nytimes.com/2013/04/25/us/legal-aid-ordered-for-mentally-disabled-immigrants.html>.

American Association of People with Disabilities  
American Association on Health and Disability  
American Civil Liberties Union  
Asian Law Caucus  
Association of University Centers on Disabilities  
Autism Speaks  
Autistic Self Advocacy Network  
Brain Injury Association of America  
CARECEN (Central American Resource Center)  
Detention Watch Network  
Disability Rights Advocates  
Disability Rights Education and Defense Fund (DREDF)  
Disability Rights Legal Center  
Epilepsy Foundation  
Human Rights First  
Human Rights Watch  
Kids in Need of Defense (KIND)  
Lambda Legal  
Legal Aid Society-Employment Law Center  
Mental Health Advocacy Services, Inc.  
Mental Health America  
MFY Legal Services, Inc.  
National Council on Aging  
National Disability Rights Network  
National Down Syndrome Society  
New York Legal Assistance Group  
Political Asylum Immigration Representation Project  
Reformed Church of Highland Park, NJ  
The Arc of the US  
The Door's Legal Services Center  
The Judge David L. Bazelon Center for Mental Health Law  
The National Council on Independent Living  
United Cerebral Palsy