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Immigrants lack access to legal representation

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Research by University of California-Berkeley Professor of Law and Sociology Catherine Albiston shows that public interest law organizations (PILOs) are not accessible to all those who may need their services, including immigrants and residents of poor counties. Her 2017 article, “Public Interest Law Organizations and the Two-Tiered System of Access to Justice in the United States,” shows that there is an uneven geographical distribution of PILOs and legal limits on the activities of PILOs in rural areas. These phenomena present a significant barrier for people in the United States seeking legal relief from issues like housing discrimination, civil rights violations, and immigration law.

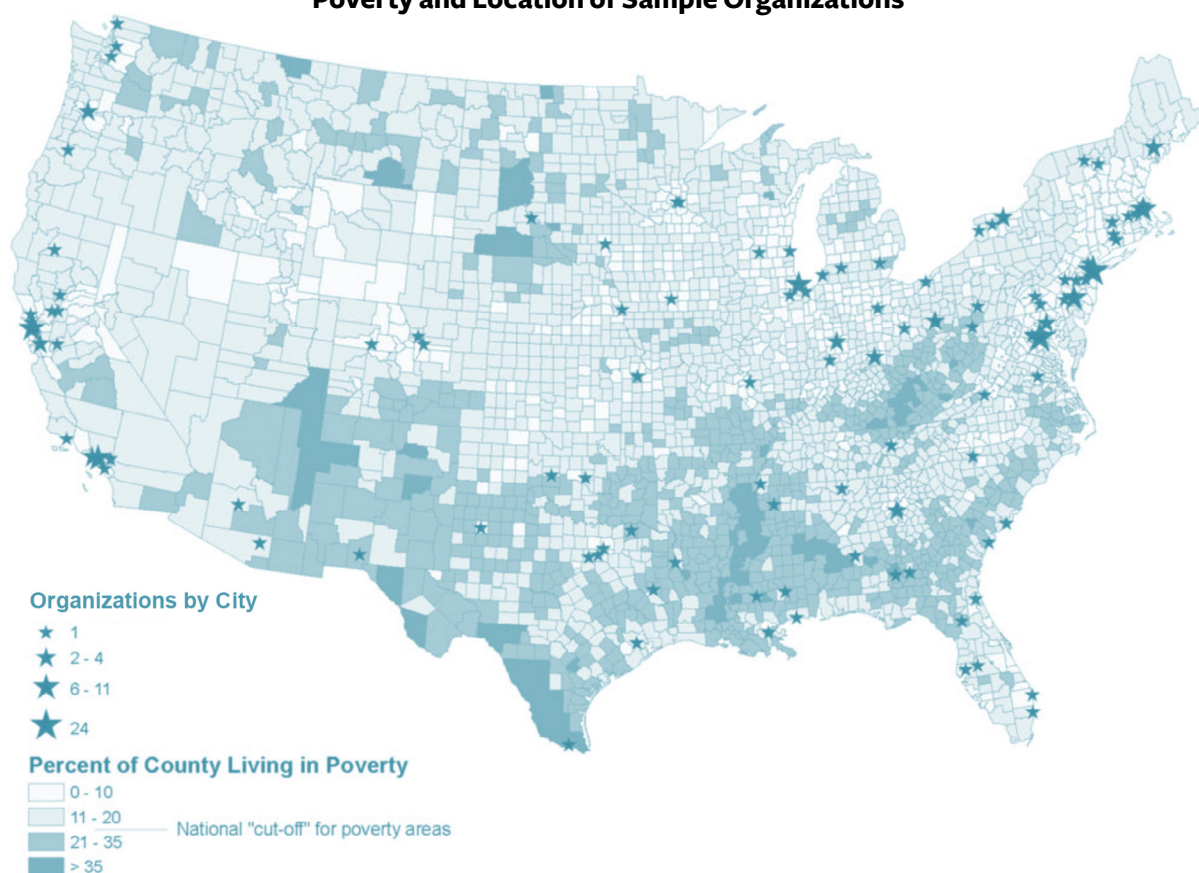
Immigrants are in higher need of pro-bono and low-cost legal services than the general population. Data from the Pew Research Center shows that 19.7% of the foreign-born in the United States were living in poverty as of 2016, compared to the native-born poverty rate of 15.8%. This means that immigrants are less likely than U.S.-born citizens to have disposable income to spend on hiring attorneys. Given that the American Immigration Council found that only 37% of immigrants in removal proceedings are represented by attorneys, the lack of financial resources among immigrants seems to manifest clearly in judicial processes. For low-income clients, PILOs are a vital resource.

the lack of Public Interest Law Organizations in conservative poorer, and less populated areas can be a serious hindrance to immigrants accessing justice

Dr. Albiston’s research sheds light on where low-cost representation can be accessed, and what issues public-interest law organizations can help with, depending on their location and source of funding. Her study reveals that PILOs engaged in appellate work--work that is capable of creating systemic change--are concentrated in major cities along the coasts, and Chicago. These sites tend to be affluent and have more progressive politics. Meanwhile, only a smattering of PILOs exist in conservative, poorer, and less populated areas. While immigrants used to settle in traditional gateway cities like Los Angeles and New York, the past thirty years have witnessed an increase in immigrants settling in mid-sized towns and rural areas. These conservative, rural areas--also called “new immigrant destinations”--may also be where immigrants specifically are at higher risk for abuse and discrimination, especially if they work in the agricultural industry. Immigrant detention centers are also often located in remote areas, cutting detainees off from the rest of the world and thereby from the possibility of legal representation. In other words, the lack of PILOs in conservative, poorer, and less populated areas can be a serious hindrance to immigrants accessing justice.



Poverty and Location of Sample Organizations



There are also differences in the kinds of cases that PILOs can take on in different regions. PILOs in small and mid-sized cities tend to take individualized cases--cases that help specific persons or families. While direct aid is certainly valuable, appellate cases are more likely to produce decisions that bring about systemic change. According to Dr. Albiston's article, the PILOs located in urban centers are usually the ones participating in appellate practice. The reason for this difference is rooted in the sources of funding. While PILOs engaged in macro-scale change are primarily privately-funded, the PILOs outside of big cities tend to be funded, at least in part, by the Legal Services Corporation, which significantly constrains the activities of its grant recipients.

The Legal Services Corporation is a non-profit established by the U.S. government to provide sizeable grants to law offices that provide civil law services to low-income clients. This means that LSC funds do not go towards criminal defense, but only to civil issues like housing matters, employment law, and family law. Immigration law also falls under civil law, though

immigration courts are organized under the executive, rather than judicial, branch of government.

Law firms receiving LSC funds have many restrictions on their activities, including a prohibition on participating in class action lawsuits, which effectively eliminates the potential to create widespread change. LSC-funded organizations also have restrictions on who they represent. The LSC's official website states that the firms they fund are not allowed to represent non-citizens, unless they are "lawful permanent residents, H2A agricultural workers, H2B forestry workers, and victims of battering, extreme cruelty, sexual assault or trafficking." This severely disadvantages undocumented immigrants, asylum-seekers, international students, and other kinds of immigrants in finding affordable legal representation, especially if they live outside of major urban areas.

LSC restrictions may also prevent immigrants from finding an attorney, even if they are eligible to be represented. PILOs receiving funds from LSCs cannot solicit clients in person. For example, an LSC-organization attorney cannot go to an immigrant church to make the congregation aware of the services they provide and offer representation. As Professor Albiston mentions in her article, most people today choose attorneys based on word of mouth and referrals. Immigrants, who often have more limited social networks, are disadvantaged by the LSC prohibitions on outreach work.

In sum, the geographical distribution of public interest law organizations makes affordable legal representation hardest to access in poor, conservative, rural areas that need those services most and are now new immigrant destinations. The few PILOs that do exist in those areas are heavily restricted in the kind of law they can practice, and who they can represent. These restrictions severely reduce immigrants' access to legal representation and by consequence, their access to justice.

At the policy level, one solution to this problem would be to abolish the restrictions placed on PILOs receiving LSC funds. The prohibitions on representing immigrants and participating in class action lawsuits are most damaging for marginalized groups and for justice more broadly. By preventing cases originating from poor, rural immigrants and citizens from reaching a court of appeals, entire categories of people are being left out of legal developments on a regional and national scale. The restrictions on LSC-funded firms makes it so that case law rarely, if ever, addresses the concerns of poor people, of rural people, or of foreign-born people. At the practical level, foundations could provide alternate funding sources to PILOs so that PILOs could end reliance on LSC funds and the restrictions they carry. The national, financially independent PILOs could also partner with local PILOs to expand out of the coastal, urban centers and into poor, rural areas, making their services available to wider variety of people. Regardless of the path chosen, steps must be taken to ensure fair representation of all people in the United States because lack of access to justice for citizens and noncitizens alike contributes to an unjust society.

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Nadia Almasalkhi is a Ph.D. student and Magistretti Fellow in Sociology at the University of California, Berkeley. Before beginning graduate school, she worked as a casework intern in a refugee resettlement agency, as a legal assistant to immigration attorneys, and as a research assistant investigating the effects of trauma on refugees in the U.S. She holds a B.A. in International Studies and a B.A. in Arabic and Islamic Studies, both from the University of Kentucky. Her research interests include the experiences of Middle Eastern emigrants, the politics of immigration law, and the intersection of nationalism and forced migrations. Her current project examines the multiple political socialization processes experienced by Syrian Americans and Syrian American transnational activism.