

Right to Counsel for Detained Migrants in Selected Jurisdictions

Australia • Canada • France • Germany • Israel
Sweden • United Kingdom

May 2017



This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

Contents

Australia.....1

Canada.....2

France.....4

Germany.....5

Israel.....6

Sweden.....7

United Kingdom.....8

Right to Counsel for Detained Migrants in Selected Jurisdictions

Law Library of Congress staff

SUMMARY This report provides information on the laws of Australia, Canada, France, Germany, Israel, Sweden, and the United Kingdom regarding the right to counsel for detained migrants. All countries included in the study allow detained migrants to be assisted by a lawyer. In Canada and Israel the authorities are required to inform detained migrants about their right to legal representation, and in France, Germany, and Sweden the right to counsel is considered a constitutional principle. In most of the countries, it is up to the migrant or asylum seeker to hire counsel; the government does not have an obligation to provide legal services to a person who entered the country without a valid visa or is subject to deportation. The United Kingdom appears to be the only country where legal counsel is provided by the government's legal aid agency free of charge to all migrants in detention. Financial assistance may be requested by those migrants who cannot afford a lawyer at their own expense in France. In some countries, the provision of government-paid legal assistance depends on the specific circumstances. In Sweden, the government has an obligation to provide legal assistance to minors, and to some other migrants because of their needs. In Germany, a legal representative may be appointed by the court if the court deems it necessary. No country was found where the law would prevent a migrant from receiving assistance from volunteer lawyers or legal aid organizations funded by other than national budget sources. The details of each country's governing laws are provided below, in alphabetical order.

I. Australia

Under the Migration Act 1958 (Cth), those who enter or remain in Australia without a valid visa are considered “unlawful non-citizens” and must be detained under the country's mandatory detention policy.¹ There is no time limit on the length of such detention, and detained individuals have limited ability to challenge the lawfulness of their detention in court.²

Australia does not have a federal bill of rights. Instead, various rights are protected under the Constitution, common law, and statutes.³

¹ Migration Act 1958 (Cth) ss 14 & 189, <https://www.legislation.gov.au/Details/C2017C00068>, archived at <https://perma.cc/5A9T-DFSE>.

² *Immigration Detention and Human Rights*, AUSTRALIAN HUMAN RIGHTS COMMISSION (Jan. 1, 2014), <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights>, archived at <https://perma.cc/X97W-KSGK>; Migration Act 1958 (Cth) pt 8.

³ *How Are Human Rights Protected in Australian Law*, AUSTRALIAN HUMAN RIGHTS COMMISSION (2006), <https://www.humanrights.gov.au/how-are-human-rights-protected-australian-law>, archived at <https://perma.cc/6PWN-C47V>.

An absolute right to legal counsel is not enshrined in the immigration legislation or under common law; there is no requirement for a lawyer to be provided at public expense if a detained person cannot afford one. Legal assistance for persons in immigration detention may be available through state government-funded legal aid programs, nongovernment organizations, or community legal centers, depending on the location and eligibility of the detained person.⁴

Those who arrive in the country without a valid visa are no longer eligible for a federal government-funded immigration advice and application assistance program.⁵

II. Canada

In Canada, if an arrest or detention is involved in an immigration context, the right to counsel is constitutionally guaranteed by section 10(b) of the Canadian Charter of Rights and Freedoms.⁶ Section 10(b) stipulates that upon arrest or detention, everyone has the right “to retain and instruct counsel without delay and to be informed of that right.”⁷

Operational Manual ENF 7 provides further information on arrest and detention procedures, stipulating that,

where the person chooses to exercise the right to counsel, the officer must provide the arrested person with a reasonable opportunity to exercise the right, taking into account any physical constraints. This includes the duty to offer the arrested or detained person the use of a telephone, in an effort to seek legal counsel. If counsel is present, the officer must allow counsel to provide advice to their client in private.⁸

The Canada Border Services Agency has provided information for those who are detained under the Immigration and Refugee Protection Act, explaining that

[detainees] have the right to be represented by counsel at your expense or to receive legal aid, if you qualify. [Detainees] will be given the necessary information about the legal

⁴ See, e.g., *Get Help with Migration*, VICTORIA LEGAL AID, <https://www.legalaid.vic.gov.au/find-legal-answers/migration/get-help> (last updated Aug. 12, 2016), archived at <https://perma.cc/GHX9-6WES>; *Immigration Service*, LEGAL AID NEW SOUTH WALES, <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/immigration-service> (last updated Dec. 22, 2016), archived at <https://perma.cc/TGW4-P6J2>.

⁵ See ANDREW & RENATA KALDOR CENTRE FOR INTERNATIONAL REFUGEE LAW, FACTSHEET: LEGAL ASSISTANCE FOR PEOPLE SEEKING ASYLUM (last updated Mar. 2017), http://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet_Legal_Assistance_Mar17.pdf, archived at <https://perma.cc/VSF3-2CXF>; *Fact Sheet – Immigration Advice and Application Assistance Scheme (IASS)*, DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION, <https://www.border.gov.au/about/corporate/information/fact-sheets/63advice> (last visited May 17, 2017), archived at <https://perma.cc/24ET-KT2X>.

⁶ Canadian Charter of Rights and Freedoms § 10(b), Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c 11 (U.K.), <http://laws-lois.justice.gc.ca/eng/Const/page-15.html#h-40>, archived at <https://perma.cc/CPJ2-X9CD>.

⁷ *Id.*

⁸ CITIZENSHIP AND IMMIGRATION CANADA, ENFORCEMENT MANUAL ENF 7: INVESTIGATION AND ARRESTS 49–50, available at <https://we.riseup.net/assets/46505/ENF+07+2003.pdf>, archived at <https://perma.cc/W9GN-MQBK>.

aid services available to [them]. [A detainee] may also designate a friend or a member of an organization or association to represent [them].⁹

According to the Operational Manual on Port of Entry Examinations, “[f]or the purpose of an Immigration Secondary examination, a person is not entitled to counsel unless formally arrested or detained. A person who is arrested or detained must be informed without delay of their right to counsel and granted the opportunity to retain and instruct counsel.”¹⁰

A guide by the Immigration and Refugee Board of Canada for proceedings before the immigration division provides a summary of the holding the Supreme Court case *Dehghani v. Canada*:

With regard to paragraph 10(b) of the Charter, the Court decided that, even if the person experienced restrictions on his or her freedom while waiting for his or her application to be processed, this is not a detention within the meaning of paragraph 10(b) of the Charter. When a person tries to enter Canada at a port of entry, the exact moment when the person is considered to be detained within the meaning of section 10 of the Charter is not clearly defined and depends on the circumstances of the case.¹¹

In the context of “legal proceedings affecting immigrants and refugee claimants,” section 167(1) of the Immigration and Refugee Protection Act (IRPA) provides for a statutory right to counsel, stating “[a] person who is the subject of proceedings before any Division of the Board and the Minister may, at their own expense, be represented by legal or other counsel.”¹²

According to a study by Canada’s Department of Justice on representation for immigrants and refugee claimants,

[e]xercise of the statutory right to counsel in cases involving immigrants and refugee claimants is limited to situations where the persons concerned are able to pay for such counsel. As a practical matter, however, many immigrants and refugee claimants, in

⁹ CANADA BORDER SERVICES AGENCY, INFORMATION FOR PEOPLE DETAINED UNDER THE IMMIGRATION AND REFUGEE PROTECTION ACT 2, <http://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf>, archived at <https://perma.cc/E5TM-K3CW>.

¹⁰ IMMIGRATION, REFUGEES, AND CITIZENSHIP CANADA, ENF 4 PORT OF ENTRY EXAMINATIONS 36 (Dec. 23, 2012), <http://www.cic.gc.ca/english/resources/manuals/enf/enf04-eng.pdf>, archived at <https://perma.cc/7CBT-T33Z>; for more on the Supreme Court of Canada’s position on whether Immigration Secondary examination is considered detention, see *Dehghani v. Canada*, [1993] 1 S.C.R. 1053, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/986/index.do>, archived at <https://perma.cc/RB9V-97BC>.

¹¹ *Guide to Proceedings Before the Immigration Division—Chapter 8: Right to Counsel*, IMMIGRATION AND REFUGEE BOARD OF CANADA, <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/GuideIdSi08.aspx#n831> (last updated Nov. 23, 2015), archived at <https://perma.cc/TU8U-BJLU>.

¹² Immigration and Refugee Protection Act, S.C. 2001, c 27, <http://laws.justice.gc.ca/eng/acts/i-2.5/page-27.html#docCont>, archived at <https://perma.cc/E8DF-SCT>; for more on the scope of this right see also *Canada (Citizenship and Immigration) v. Gutierrez*, 2015 FC 1198, paras. 38–45, <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/120646/index.do>, archived at <https://perma.cc/FR93-QR69>.

particular refugee claimants, do not have substantial financial resources, so the exercise of their right to counsel is largely dependent on the availability of legal aid.¹³

III. France

The right to an attorney has been recognized as a constitutional principle in France since at least 1976.¹⁴ The right to legal assistance is also enshrined in the European Convention on Human Rights, which is applicable in France.¹⁵

French law also provides that a person who does not have the means to hire an attorney can claim financial assistance for that specific purpose.¹⁶ This financial assistance for purposes of hiring an attorney also applies to foreigners who are the subject of deportation procedures.¹⁷

French immigration law, including the rights of detained migrants, is principally governed by the Code of Entry and Residence of Foreigners and of the Right of Asylum.¹⁸

This Code also states that a foreigner who is detained in anticipation of his/her deportation from French territory has the right to legal counsel and must be informed of this right in a language that he/she can understand.¹⁹ Furthermore, article L512-1 of the same Code provides that a foreigner who has been ordered to leave French territory has thirty days to challenge the order and has a right to legal aid in doing so.²⁰

¹³ *Representation for Immigrants and Refugee Claimants*, GOVERNMENT OF CANADA, DEPARTMENT OF JUSTICE, http://www.justice.gc.ca/eng/rp-pr/other-autre/ir/rr03_la16-rr03_aj16/p2.html (last updated Dec. 2, 2016), archived at <https://perma.cc/AF68-ACQU>.

¹⁴ Conseil constitutionnel [Constitutional Council], Décision No. 76-70 DC du 2 décembre 1976 [Decision No. 76-70 of Dec. 2, 1976], <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1976/76-70-dc/decision-n-76-70-dc-du-2-decembre-1976.7477.html>, archived at <https://perma.cc/Q96Y-M6WS>.

¹⁵ European Convention on Human Rights art. 6, Nov. 4, 1950, 213 U.N.T.S. 221, http://www.echr.coe.int/Documents/Convention_ENG.pdf, archived at <https://perma.cc/V6U3-PR25>.

¹⁶ Loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique [Law No. 91-647 of July 10, 1991 Regarding Legal Aid], art. 2, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006077779&dateTexte=vig#LEGIARTI000006491176>, archived at <https://perma.cc/7GK7-JXWU>.

¹⁷ *Id.* art. 3.

¹⁸ CODE DE L'ENTRÉE ET DU SÉJOUR DES ÉTRANGERS ET DU DROIT D'ASILE [CESEDA] [CODE OF ENTRY AND RESIDENCE OF FOREIGNERS AND OF THE RIGHT OF ASYLUM], https://www.legifrance.gouv.fr/telecharger_pdf.do?cidTexte=LEGITEXT000006070158, archived at <https://perma.cc/BZ5U-TBRJ>.

¹⁹ CESEDA arts. L551-2, L551-3.

²⁰ *Id.* art. L512-1.

IV. Germany

A. Right to Counsel in General

The right to a fair trial, which is derived from article 2, paragraph 1 of the German Basic Law in conjunction with the rule-of-law principle (*Rechtsstaatsprinzip*), grants everyone, not just German citizens, a right to legal representation in a proceeding.²¹ The German Federal Constitutional Court has held that the right to a fair trial as a general principle applies to all types of proceedings.²²

In addition, a right to counsel in an action challenging detention is codified in the European Convention on Human Rights, which is applicable in Germany.²³

B. Right to Counsel for Foreigners

Section 106, paragraph 2 of the Residence Act provides that the procedure codified in Book Seven of the Act on Proceedings in Family Matters and in Matters of Noncontentious Jurisdiction applies in cases of deprivation of liberty. Section 78, paragraph 2 of the Act on Proceedings in Family Matters and in Matters of Noncontentious Jurisdiction provides a right to counsel when “representation by an attorney appears necessary based upon the complexity of the factual and legal circumstances.”²⁴

The Federal Court of Justice held that section 78, paragraph 2 applies to an indigent foreigner who is in custody awaiting deportation.²⁵

²¹ GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] I at 1, <http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>, archived at <http://perma.cc/8NFT-SVRZ>, unofficial English translation at http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf, archived at <http://perma.cc/AF85-NA4C>.

²² Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], June 14, 2000, docket no. 2 BvR 993/94, para. 4, http://www.bverfg.de/e/rk20000614_2bvr099394.html, archived at <http://perma.cc/6NUA-FL3L>.

²³ European Convention on Human Rights, *supra* note 15, arts. 5 (para. 4) & 6.

²⁴ Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG) [Residence Act], in version promulgated Feb. 25, 2008, BGBL. I at 162, as amended, http://www.gesetze-im-internet.de/bundesrecht/aufenthg_2004/gesamt.pdf, archived at <http://perma.cc/8QM6-Z6C3>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.pdf, archived at <http://perma.cc/EDD8-JC8V> (English version updated through Mar. 11, 2016); Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit [FamFG] [Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction], Dec. 17, 2008, BGBL. I at 2586, 2587, <http://www.gesetze-im-internet.de/bundesrecht/famfg/gesamt.pdf>, archived at <http://perma.cc/US2X-5BBX>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_famfg/englisch_famfg.pdf, archived at <http://perma.cc/DL5U-6YYH> (English version updated through Apr. 20, 2013).

²⁵ Residence Act, section 62; Bundesgerichtshof [BGH] [Federal Court of Justice], Feb. 28, 2013, docket no. V ZB 138/12, paras. 12–15, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=3a917ff1543ad6b68df42ac80e3065e4&nr=63710&pos=0&anz=1>, archived at <http://perma.cc/5D28-YNJJ>; BGH, Sept. 12, 2013, docket no. V ZB 121/12, paras. 7–11, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=9cf5e27cb9b69799be1bbca103891c34&nr=65751&pos=0&anz=1>, archived at <http://perma.cc/L9GJ-ZMGX>.

In addition to an attorney, the Act on Proceedings in Family Matters and in Matters of Noncontentious Jurisdiction provides that the court must appoint a guardian ad litem for the person concerned when it is “necessary for the assertion of his [or her] interests.”²⁶ Due to the legal complexity and the language barrier, this will be the case in deportation proceedings.

Furthermore, in some German states local attorneys regularly visit detained migrants and provide them with legal advice. The visits are organized by the local bar associations and the attorney costs are paid from funds that the state allocates to legal advisory assistance for citizens with low income.²⁷

In the case of asylum seekers, the Asylum Act codifies a right to counsel for a detained foreigner in certain enumerated cases. The foreigner must be given an opportunity without delay to contact a legal representative of his choice unless he or she has already secured legal counsel.²⁸

Lastly, section 18a, paragraph 1 of the Asylum Act grants a right to counsel if a foreigner applies for asylum in the transit area of an airport (“airport procedure”) and the application is denied. The applicant will be denied entry into Germany and threatened with deportation if he or she enters Germany illegally. The applicant has the right to an attorney and can appeal the decision within three days.

V. Israel

Israel has traditionally maintained restrictive immigration policies. This is due to that fact that it borders states and populations that are hostile, is affected by geopolitically volatile conditions in the Middle East and Africa, respects civil liberties, and enjoys a significantly higher standard of living as compared with other countries in the surrounding region.²⁹

The authority to make determinations on refugee status in Israel is vested in the Minister of Interior. Requests by asylum seekers in Israel are handled by the Refugee Status Determination Unit (RSD) of the Ministry of Interior.³⁰

²⁶ Act on Proceedings in Family Matters and in Matters of Noncontentious Jurisdiction § 419.

²⁷ Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen [BerHG] [Act on Advisory Assistance and Representation for Citizens with a Low Income [Advisory Assistance Act], June 18, 1980, BGBL. I at 689, as amended, <http://www.gesetze-im-internet.de/bundesrecht/berathig/gesamt.pdf>, archived at <http://perma.cc/JFF6-KWV5>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_berathig/englisch_berathig.pdf, archived at <http://perma.cc/P3V7-66XT> (English version updated through Aug. 31, 2015).

²⁸ Asylgesetz [AsylG] [Asylum Act], Sept. 2, 2008, BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] I at 1798, as amended, § 14, para. 3, http://www.gesetze-im-internet.de/bundesrecht/asylvfg_1992/gesamt.pdf, archived at <http://perma.cc/6P9A-4BBE>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.pdf, archived at <http://perma.cc/K5UR-5KVK> (English version updated through Mar. 11, 2016).

²⁹ RUTH LEVUSH, REFUGEE LAW AND POLICY: ISRAEL (Law Library of Congress, Mar. 2016; updated June 21, 2016), http://www.loc.gov/law/help/refugee-law/israel.php#_ftn28, archived at <https://perma.cc/6DAX-LPNA>.

³⁰ Procedure for Handling Political Asylum Seekers in Israel, Population and Immigration Authority, Procedure No. 5.2.0012 (5th ed., updated Feb. 26, 2017), https://www.gov.il/BlobFolder/policy/handling_political_asylum_seekers_in_israel/he/5.2.0012_eng.pdf, archived at <https://perma.cc/DN2N-QLNX>.

In accordance with Procedure for Handling Political Asylum Seekers in Israel issued by the Population and Immigration Authority,

[t]he Authority will ensure that information sheets regarding the manner of submitting an application for political asylum in Israel, the procedure for handling the applications, the duties of the Applicant, the right of the asylum seeker to contact a legal representative of his choosing and the scope of representation to which he is entitled during the process, will be available in places of custody, the Authority's offices and the Authority's website on the internet.³¹

VI. Sweden

Detained migrants typically have a right to public counsel in Sweden. The Aliens Act provides that a minor migrant must always be assigned public counsel when detained.³² The Aliens Act states that asylum seekers (who are not minors) will be afforded public counsel, except in cases where it “must be presumed” that no counsel is needed.³³

There has historically been a presumption that the court cannot assign a public counsel in Dublin transfer cases—cases where a migrant has arrived from another EU Member State and the Swedish Migration Authority has found that the migrant should be transferred to another EU Member State to have his or her asylum application reviewed there.³⁴ However, if the person has been detained for more than three days, the new Dublin rules provide that the individual nevertheless has a right to counsel.³⁵ The right to public counsel for detained migrants has also been tried and affirmed by the Migration Court of Appeal (the final instance for migration matters) in two additional cases.³⁶

The Swedish Migration Authority will assess whether the person is in need of public counsel and assign one where needed.³⁷

³¹ *Id.* § 1a.

³² 18 ch. 2 § 2 para., UTLÄNNINGSLAG [ALIENS ACT] (Svensk författningssamling [SFS] 2005:715, <http://www.notisum.se/rnp/sls/lag/20050716.htm>, archived at <https://perma.cc/TF6K-2ZY3>, unofficial English translation available at <http://www.government.se/government-policy/migration/aliens-act>, archived at <https://perma.cc/VJ5E-4H8U>.

³³ *Id.* 18 ch. 1 § 1 para.

³⁴ Migrationsöverdomstolen [Court of Migration Appeal] MIG [Court of Migration Appeal Annual Reporter] 2008:7, <https://lagen.nu/dom/mig/2008:7>, archived at <https://perma.cc/W9Q5-SDU2>.

³⁵ Migrationsöverdomstolen MIG 2014:29, <https://lagen.nu/dom/mig/2014:29>, archived at <https://perma.cc/3EAK-WXLY>.

³⁶ See Migrationsöverdomstolen MIG 2009:18, <https://lagen.nu/dom/mig/2009:18>, archived at <https://perma.cc/R7R2-KMJA>; MIG 2010:9, <https://lagen.nu/dom/mig/2010:9>, archived at <https://perma.cc/G5BD-V8MB>.

³⁷ *Public Counsel*, MIGRATIONSVERKET, <https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Children-seeking-asylum/With-parent-/Application-for-asylum/Public-counsel.html> (last updated Mar. 30, 2015), archived at <https://perma.cc/RK47-3XCP>.

The right to counsel is further guaranteed in the Swedish Constitution and as part of Sweden's obligation to uphold the European Convention on Human Rights. The European Convention on Human Rights, provisions of which guarantee a fair trial including a right to counsel, is protected by the Swedish Constitution as supreme to other laws.³⁸ The right to a fair trial (which includes the right to counsel) is also separately codified in chapter 2, section 11, paragraph 2 of the Swedish Constitution.³⁹

VII. United Kingdom

Immigrants that are detained in the United Kingdom have a right to legal counsel, and this counsel is frequently provided free of charge by the UK's Legal Aid Agency, an executive agency sponsored by the Ministry of Justice.⁴⁰

At Immigration Removal Centres, legal clinics are held on a regular basis and each detainee is entitled to thirty minutes of free legal advice.⁴¹

Newspapers have reported that cuts to the budget for legal aid has resulted in only 50% of individuals detained in Immigration Removal Centers receiving legal advice.⁴²

The UK also detains immigrants in prisons across the UK. A report published by the HM Inspectorate of Prisons noted that immigrants detained in prisons had "poorer access to publically funded legal advice and representation than those held in IRCs."⁴³ A report from a non-profit organization stated that only twenty two percent of these individuals had received legal advice from the Legal Aid Agency.⁴⁴

³⁸ See REGERINGSFORMEN [RF] [CONSTITUTION] 2:19, <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform-sfs-1974-152>, archived at <https://perma.cc/7DYX-5TMA>, unofficial English translation available at <http://www.riksdagen.se/en/SysSite/Assets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf/>, archived at <https://perma.cc/7LDD-J4HG>.

³⁹ RF 2:11, 2 para.

⁴⁰ *What We Do*, LEGAL AID AGENCY, <https://www.gov.uk/government/organisations/legal-aid-agency>, archived at <https://perma.cc/5DUV-FZ2K>.

⁴¹ HM Inspectorate of Prisons, *People in Prison: Immigration Detainees A Findings Paper* by HM Inspectorate of Prisons, Nov. 2015, ¶ 1.17–1.18, available at <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/11/HMIP-Immigration-detainees-findings-paper-web-2015.pdf>, archived at <https://perma.cc/Y8PE-6S5C>.

⁴² Tom Peck, *Half of Immigration Detainees in UK Have No Representation Because of Legal Aid Cuts*, *Report Finds*, THE INDEPENDENT (London) (Dec. 9, 2016), <http://www.independent.co.uk/news/uk/politics/legal-aid-cuts-migrants-immigrants-detention-centre-half-no-representation-help-report-survey-a7464301.html>, archived at <https://perma.cc/AWM8-2JQN>.

⁴³ HM Inspectorate of Prisons, *supra* note 41, ¶¶ 1.19–1.23.

⁴⁴ *Mind the Gap: Immigration Advice for Detainees in Prisons*, BAIL FOR IMMIGRATION DETAINEES, http://www.biduk.org/sites/default/files/media/docs/Mind%20the%20Gap_1.pdf, archived at <https://perma.cc/XPM9-XPLN>.

Until 2015 the UK had a fast-track procedure in place to expedite certain immigration cases. This procedure was removed as a result of a judgement from the Court of Appeal that noted it often resulted in immigrants not being able to obtain legal counsel.⁴⁵

⁴⁵ MINISTRY OF JUSTICE, IMMIGRATION AND ASYLUM APPEALS CONSULTATION ON PROPOSALS TO EXPEDITE APPEALS BY IMMIGRATION DETAINEES, 2016, ¶ 8, https://consult.justice.gov.uk/digital-communications/expedited-immigration-appeals-detained-appellants/supporting_documents/consultationdocument.pdf, archived at <https://perma.cc/PNT5-66GU>.