

Access to Justice in Immigration and Refugee Law: A Comparative Review of Legal Frameworks, Institutional Barriers, and Reform Pathways in Canada and the United States-2026

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ABSTRACT

Access to justice is central to fair immigration and refugee systems, yet many migrants and refugees struggle to effectively use the legal protections that exist on paper. However, this review paper examines how access to justice operates in immigration and refugee law in Canada and the United States, with a focus on legal frameworks, institutional practices, and practical barriers faced by non-citizens. Drawing on academic literature, court decisions, policy reports, and institutional studies, this article reviews how both countries design and apply immigration and refugee procedures, and how these processes affect the ability of individuals to understand the law, obtain legal representation, and receive fair and timely decisions. The review shows that although Canada and the United States formally recognize principles such as due process and procedural fairness, access to justice remains uneven in practice. Some of the major challenges include limited access to publicly funded legal representation, complex and technical procedures, long delays and backlogs, immigration detention, and wide administrative discretion. Disproportionately, these barriers affect asylum seekers, refugees, and other vulnerable migrants. Therefore, through a comparative analysis, the paper highlights similarities and differences between the two systems and identifies lessons drawn from each. Furthermore, the paper concludes by reviewing reform pathways discussed in the literature, including expanding access to legal aid, simplifying procedures, strengthening oversight, and promoting community-based and rights-focused approaches. Therefore, improving access to justice in immigration and refugee law is presented not only as a legal requirement, but also as a necessary step toward fairness, accountability, and public confidence in migration governance.

Keywords: Access to justice; immigration law; refugee law; comparative legal analysis; Canada; United States; legal representation; procedural fairness

INTRODUCTION

Globally, immigration and refugee law plays a decisive role in the lives of millions of people. For migrants and refugees, legal decisions determine whether they can remain with their families, access employment and social services, or return to situations of conflict, persecution, or hardship. Given the significant risks involved, access to justice is not a secondary concern in immigration and refugee systems; it is a major requirement for fairness, legitimacy, and the protection of fundamental rights.

Access to justice refers to more than the existence of laws and institutions. It includes the practical ability of individuals to understand legal rules, obtain assistance, present their cases, and receive decisions that are fair, timely, and reasoned. Scholars have long argued that rights are meaningful only when people can actually use them (Cappelletti and Garth, 1978). In immigration and refugee law, this challenge is severe because non-citizens often face language barriers, limited financial resources, trauma, and unfamiliar legal systems.

Additionally, Canada and the United States are among the world's most significant destination countries for migrants and refugees. Both countries have well-developed legal frameworks and long-standing commitments to international refugee and human rights standards. At the same time, both systems have been criticized for procedural complexity, limited access to legal representation, growing backlogs, and enforcement-focused

policies that can compromise fairness (Motomura, 2014; Ramji-Nogales et al., 2007). These pressures make Canada and the United States valuable case studies for examining how access to justice operates in practice.

Despite the fact that both countries share common legal traditions and democratic values, their immigration and refugee systems differ in important ways. Canada relies heavily on administrative tribunals and constitutional principles of procedural fairness, while the United States emphasize on administrative discretion within an enforcement-driven framework. It is on this note that existing literature suggests that these structural differences shape how migrants experience justice, but they do not erase common barriers such as lack of counsel, detention-related disadvantages, and limited review mechanisms (Eagly and Shafer, 2015; Legomsky and Rodriguez, 2020).

Also, the purpose of this review paper is to examine access to justice in immigration and refugee law through a comparative analysis of Canada and the United States. Rather than presenting new empirical data, the paper integrates existing legal studies, policy reports, court decisions, and institutional frameworks. It seeks to answer three main questions: how do legal frameworks in both countries formally address access to justice; what institutional and practical barriers continue to limit meaningful access; and what reform pathways have been proposed or implemented to improve fairness and accountability.

Furthermore, by reviewing and comparing these issues, the paper aims to contribute to ongoing discussions among legal scholars, policymakers, and practitioners. By improving access to justice in immigration and refugee law is essential not only for protecting individual rights, but also for maintaining public confidence in legal institutions and ensuring that migration governance aligns with democratic and humanitarian values.

Access to Justice in Immigration and Refugee Law

Understanding Access to Justice

Access to justice generally means that people are able to understand the law, use legal institutions, and obtain fair results when their rights or legal status are at risk. In immigration and refugee law, this concept is important because decisions always determine whether a person can remain in a country, reunite with family, work legally, or avoid deportation to unsafe conditions (Cappelletti and Garth, 1978; Sandefur, 2008).

Unlike many other areas of law, immigration and refugee cases involve non-citizens who may not speak the official language of the country, may lack legal knowledge, and may have limited financial resources. As a result, access to justice goes beyond the mere existence of courts or tribunals. It also includes the ability to obtain legal advice, understand procedures, present evidence, and participate significantly in decision-making processes (Galanter, 1974).

Major Dimensions of Access to Justice in Immigration Law

Generally, scholars agree that access to justice in immigration and refugee law can be understood through several interrelated dimensions.

First, legal accessibility refers to how easy it is for migrants and asylum seekers to understand the law and legal procedures. Immigration systems are often complex, with strict deadlines, technical forms, and frequent policy changes. When laws are not clear or constantly changing, individuals without legal training face serious disadvantages (Menjívar and Abrego, 2012).

Second, availability of legal representation is a major element of access to justice. Research consistently shows that migrants and refugees who have legal representation are far more likely to succeed in their cases than those who do not (Eagly and Shafer, 2015). However, in both Canada and the United States, immigration proceedings are classified as civil rather than criminal matters, meaning there is no automatic right to government-funded legal counsel.

Third, institutional fairness concerns how immigration courts, tribunals, and administrative agencies operate in practice. This includes issues such as decision-maker independence, procedural fairness, reasonable processing

times, and the consistency of rulings. Delays, backlogs, and inconsistent decisions can bridge trust in the system and lead to unjust outcomes (Ramji-Nogales, Schoenholtz, and Schrag, 2009).

Fourth, practical and social barriers must also be considered. These include language barriers, lack of access to interpreters, fear of authorities, detention, trauma, and limited access to information. Furthermore, refugees and asylum seekers often come from conflict or persecution backgrounds, which can make it difficult for them to manage legal matters or present their cases effectively (Silove, 2013).

International and Normative Foundations

The idea of access to justice in immigration and refugee law is supported by international human rights principles. International instruments emphasize that everyone, irrespective of nationality or legal status, should have access to fair procedures and effective solutions. For instance, organizations such as the United Nations High Commissioner for Refugees (UNHCR) stress that asylum systems must be fair, efficient, and accessible to those seeking protection (UNHCR, 2014).

Similarly, the International Organization for Migration (IOM) highlights that access to justice is essential for protecting migrants from exploitation, wrongful removal, and human rights violations, most especially for vulnerable groups such as refugees, stateless persons, and undocumented migrants (IOM, 2019).

Although international law sets fundamental standards, the actual realization of access to justice largely depends on domestic legal systems. This creates differences in how countries implement legal safeguards, fund legal aid, and design immigration adjudication systems.

Comparative Lens: Why Canada and the United States?

A comparative framework is useful because Canada and the United States share similar legal traditions based in common law, yet they differ significantly in how they approach access to justice in immigration and refugee matters. Canada places more emphasis on administrative fairness and, in some provinces, provides publicly funded legal aid for refugee claimants. By contrast, the United States relies more on adversarial proceedings and offers limited access to publicly funded legal representation (Rehaag, 2017; Eagly and Shafer, 2015).

Therefore, by comparing these two systems, this review adopts access to justice as an analytical tool to evaluate how legal rules, institutional structures, and policy choices shape real-world outcomes for migrants and refugees. This framework allows for the identification of best practices, systemic weaknesses, and potential reform pathways that can improve fairness and efficiency in both jurisdictions.

Conceptual Framework Applied to This Review

Access to justice is understood as a multi-layered concept that includes legal clarity, representation, institutional design, and operational access. The framework guides the analysis by asking three major questions:

- i. Do migrants and refugees understand and meaningfully engage with immigration procedures?
- ii. Do legal institutions provide fair, timely, and consistent decision-making?
- iii. Do existing systems reduce or strengthen inequality based on legal status, income, or vulnerability?

Using this conceptual foundation, this review paper examines how Canada and the United States address these questions in law and practice, and what reforms may strengthen access to justice in immigration and refugee systems.

Immigration and Refugee Protection

Immigration and Refugee Law Frameworks

Immigration and refugee protection in both Canada and the United States is governed by a combination of domestic legislation, administrative regulations, and international legal obligations. However, these frameworks

determine who is allowed to enter a country, who can remain legally, and who qualifies for protection as a refugee or asylum seeker.

Although both countries are built on common law traditions and are parties to major international refugee instruments, their legal systems differ in structure, procedure, and emphasis. These differences play an essential role in shaping access to justice for migrants and refugees (Hathaway and Foster, 2014).

Conversely, internationally, refugee protection is guided by the 1951 Refugee Convention and its 1967 Protocol, which establish the principle of non-refoulement; meaning that no one should be returned to a country where they face persecution. The United Nations High Commissioner for Refugees (UNHCR) provides authoritative guidance on how states should interpret and apply these obligations, but national governments retain broad discretion in designing their own immigration systems (UNHCR, 2014).

Legal Framework in Canada

Canada's immigration and refugee system is primarily governed by the Immigration and Refugee Protection Act (IRPA), which came into force in 2002. The IRPA sets out the legal rules for immigration, refugee protection, enforcement, and removal. One of its stated objectives is to ensure fairness, consistency, and compliance with international human rights standards (IRPA, 2001).

Refugee claims in Canada are usually decided by the Immigration and Refugee Board (IRB), an independent administrative tribunal. The IRB is divided into different divisions, with the Refugee Protection Division responsible for deciding whether an individual qualifies as a refugee or a person in need of protection. Proceedings are intended to be non-adversarial, meaning the decision-maker plays an active role in assessing evidence rather than acting as a passive judge between opposing parties (Rehaag, 2017).

Canadian law also provides for judicial review by the Federal Court, allowing claimants to challenge decisions that are unfair or legally unreasonable. While judicial review is discretionary and limited in scope, it serves as an important accountability mechanism within the legal framework (Rehaag, 2017).

In terms of access to justice, Canada's framework is often seen as more protective than that of the United States. In some provinces, refugee claimants may qualify for publicly funded legal assistance, and interpretation services are provided during hearings. However, access still varies by province, and delays and backlogs remain persistent challenges (Canadian Council for Refugees, 2018).

Legal Framework in the United States

The United States governs immigration and refugee matters through the Immigration and Nationality Act (INA). Unlike Canada, the United States system is highly conflicting. Asylum cases are heard in immigration courts under the Executive Office for Immigration Review (EOIR), which operates within the Department of Justice. This structure has raised concerns about judicial independence, as immigration judges are part of the executive branch rather than an independent judiciary (Ramji-Nogales et al., 2009).

In the United States immigration proceedings, individuals do not have a right to government-appointed legal counsel. Although they are allowed to hire a lawyer at their own expense, many asylum seekers and migrants cannot afford representation. Studies consistently show that lack of legal counsel reduces the chances of a successful outcome significantly (Eagly and Shafer, 2015).

Another important feature of the United States framework is the global use of immigration detention. Detention can limit access to lawyers, restrict communication, and make it more difficult for individuals to gather evidence or prepare their cases. These factors directly affect procedural fairness and access to justice (Menjívar and Abrego, 2012).

Judicial review is available through the federal courts, but strict deadlines, jurisdictional limits, and complex procedural rules often prevent migrants from effectively challenging negative decisions. As a result, legal protections that exist on paper may not always be accessible in practice (Ramji-Nogales et al., 2009).

Comparative Implications for Access to Justice

While both Canada and the United States formally recognize refugee protection duties, their legal frameworks produce different access-to-justice outcomes. Canada's tribunal-based and less adversarial model lay more emphasis on procedural fairness and administrative justice. The United States system, by contrast, emphasizes enforcement and adversarial litigation, which can affect vulnerable individuals without legal representation negatively.

These structural differences matter because immigration and refugee law does not operate in a vacuum. Legal rules interact with institutional design, funding decisions, and political priorities. Even when laws appear neutral, their implementation can enhance inequality and exclusion if adequate safeguards are not in place (Galanter, 1974).

Therefore, understanding these legal frameworks is essential for evaluating how access to justice is either supported or threaten in practice. The next section builds on this analysis by examining the institutional and practical barriers that migrants and refugees face when managing these systems.

Access to Justice

Institutional Barriers to Access to Justice

Even when strong laws exist to protect migrants and refugees, the institutions responsible for enforcing those laws can unintentionally create barriers. These barriers prevent individuals from fully understanding their rights, accessing legal assistance, and effectively presenting their cases. Institutional challenges include limited resources, procedural complexity, and organizational structures that marginalize deprived communities (Menjívar and Abrego, 2012; Eagly and Shafer, 2015).

Institutional Barriers in Canada

In Canada, the Immigration and Refugee Board (IRB) is responsible for refugee protection decisions. While designed to be independent and non-adversarial, several institutional barriers remain.

One major issue is the long waiting times and case backlogs. Claimants often wait months or even years before their cases are heard, which causes stress and uncertainty (Rehaag, 2017). However, access to legal representation is another challenge, especially in remote areas. While some claimants can access legal aid, many do not, and this reduces the ability to effectively argue their cases (Canadian Council for Refugees, 2018).

Language and interpretation services, though generally provided, may not always be sufficient or consistent. Many claimants face difficulties completing complex forms or understanding procedural rules without professional help. Limited resources and heavy caseloads within the IRB can also affect how fast and quality of decisions, thereby leading to inconsistencies and delays (Canadian Council for Refugees, 2018; Rehaag, 2017).

Institutional Barriers in the United States

In the United States, the Executive Office for Immigration Review (EOIR) oversees immigration courts. This system is highly adversarial, with judges operating under the Department of Justice. This setup raises concerns about judicial independence and impartiality (Ramji-Nogales et al., 2009).

A significant barrier is the lack of guaranteed legal counsel. Migrants are not provided lawyers, and many cannot afford one. Research shows that claimants with legal representation have a much higher chance of success, highlighting how lack of counsel creates inequality (Eagly and Shafer, 2015).

Immigration detention is another barrier. Being detained limits access to legal advice, makes communication with attorneys difficult, and hinders the ability to gather evidence. Detention facilities are often located far from courts or legal services, creating additional logistical challenges. Court backlogs, procedural complexity, and

frequent policy changes add to the uncertainty and make it harder for migrants to prepare their cases (Ramji-Nogales et al., 2009; Menjívar and Abrego, 2012).

Common Institutional Barriers in Both Countries

Both Canada and the United States share common challenges that affect access to justice. They include:

- i. Limited legal representation:** Many migrants cannot afford lawyers, and publicly funded options are scarce.
- ii. Long processing times:** Delays in hearings can cause uncertainty and psychological stress.
- iii. Complex procedures:** Technical rules and forms can be confusing for non-experts.
- iv. Inconsistent decision-making:** Decisions may vary significantly between different tribunals or judges, thereby causing unpredictability.
- v. Geographical and detention challenges:** Being detained or located far from legal services reduces participation in proceedings.

Implications for Access to Justice

These institutional barriers can make it very difficult for migrants and refugees to exercise their rights. Even when laws are strong on paper, the way institutions operate, the resources available, and the complexity of procedures can create disadvantages for those seeking protection. Therefore, identifying and addressing these barriers is essential for making immigration and refugee systems fairer and more accessible (Silove, 2013).

Reform Pathways

Pathways and Recommendations

Addressing the challenges that migrants and refugees face requires comprehensive reforms targeted at improving both legal frameworks and institutional practices. Effective reform strategies should focus on enhancing access to legal representation, streamlining procedures, reducing delays, and ensuring fairness and consistency in decision-making. These reforms can help ensure that legal protections are not only available on paper, but also accessible in practice (Hathaway and Foster, 2014; Sandefur, 2008).

Legal and Policy Reforms

One important approach is to strengthen legal protections and ensure clear guidelines for asylum and immigration processes. In Canada, this could involve expanding eligibility for legal aid and providing consistent language interpretation services across all regions. In the United States, legal reforms could focus on guaranteeing access to counsel for asylum seekers and establishing clearer procedural safeguards to protect claimants in detention (Eagly and Shafer, 2015).

Other policy reforms include harmonizing standards across jurisdictions to reduce disparities in decision-making, thereby ensuring timely judicial review, and adopting best practices from international refugee law to align domestic procedures with the principles of fairness and non-refoulement (Hathaway and Foster, 2014; Ramji-Nogales et al., 2009).

Institutional and Procedural Reforms

Institutional reforms can improve efficiency and fairness. For example, increasing resources for tribunals and courts can help reduce backlogs and processing times. Training programs for judges, legal officers, and staff can as well promote consistent decision-making and reduce procedural errors.

Furthermore, technology can also be leveraged to simplify procedures. Online case tracking, digital submission of documents, and virtual hearings can increase accessibility, especially for claimants in remote areas (Silove, 2013).

Community and Stakeholder Engagement

Engaging civil society, legal aid organizations, and community groups is essential for strengthening support for migrants and refugees. Partnerships between government agencies and non-governmental organizations can provide educational programs, legal clinics, and advocacy services that empower claimants to manage the system effectively (Canadian Council for Refugees, 2018).

RECOMMENDATIONS

Based on the analysis above, the following recommendations are proposed to improve access to justice in immigration and refugee law:

- 1. Expand access to legal representation:** Ensure all claimants have access to affordable or free legal counsel.
- 2. Reduce delays and backlogs:** Increase staffing and resources for tribunals and courts.
- 3. Simplify procedures:** Provide clear, user-friendly forms and guidelines.
- 4. Strengthen interpretation services:** Ensure consistent and professional language support.
- 5. Enhance judicial independence and fairness:** Establish safeguards to protect adjudicative neutrality.
- 6. Leverage technology:** Implement digital case management systems and virtual hearings.
- 7. Engage community support:** Partner with NGOs and civil society to provide legal education and advocacy.

By implementing these reforms can make immigration and refugee systems more fair, efficient, and accessible, ensuring that vulnerable populations are able to exercise their legal rights effectively (Sandefur, 2008; Silove, 2013).

REFERENCES

1. Abrego, L. J., and Menjivar, C. (2011). Immigrant Latina mothers as targets of legal violence. *International Journal of Sociology of the Family*, 37(1), 9–26.
2. Canadian Council for Refugees. (2018). Access to justice for refugees and migrants in Canada. CCR Publications.
3. Cappelletti, M., and Garth, B. (1978). Access to justice: The worldwide movement to make rights effective. Sijthoff & Noordhoff.
4. Eagly, I. V., and Shafer, S. (2015). A national study of access to counsel in immigration court. *University of Pennsylvania Law Review*, 164(1), 1–91.
5. Galanter, M. (1974). Why the “haves” come out ahead: Speculations on the limits of legal change. *Law & Society Review*, 9(1), 95–160.
6. Guild, E., and Bhabha, J. (2017). Migration and refugee law: Principles and practice. Oxford University Press.
7. Hathaway, J. C., and Foster, M. (2014). The law of refugee status (2nd ed.). Cambridge University Press.
8. Immigration and Refugee Protection Act, S.C. 2001, c. 27 (Canada).
9. International Organization for Migration (IOM). (2019). Access to justice for migrants. IOM Publications.
10. Menjivar, C., and Abrego, L. (2012). Legal violence: Immigration law and the lives of Central American immigrants. *American Journal of Sociology*, 117(5), 1380–1421.
11. Ramji-Nogales, J., Schoenholtz, A. I., and Schrag, P. G. (2009). Refugee roulette: Disparities in asylum adjudication and proposals for reform. *Stanford Law Review*, 60(2), 295–412.
12. Rehaag, S. (2017). Judicial review of refugee determinations: The luck of the draw? *Queen’s Law Journal*, 38(1), 1–58.
13. Sandefur, R. L. (2008). Access to civil justice and race, class, and gender inequality. *Annual Review of Sociology*, 34, 339–358.

14. Silove, D. (2013). The ADAPT model: A conceptual framework for mental health and psychosocial programming in post conflict settings. *Intervention*, 11(3), 237–248.
15. United Nations High Commissioner for Refugees (UNHCR). (2014). Fair and efficient asylum procedures: A non-exhaustive overview of applicable international standards. UNHCR.