

Shalanda Young, Director
Office of Management and Budget
White House
1600 Pennsylvania Ave. NW
Washington D.C. 20500

October 3, 2022

Re: Priorities for immigrant communities in the FY2024 White House budget

Dear Director Young:

The undersigned organizations work to advance the rights and dignity of immigrant and border communities in the United States. The President's annual budget request is central to these goals. We were pleased to see important advancements in the White House's proposed FY2023 budget and encourage bolder steps toward a humane approach to immigration policy in the proposed FY2024 budget.

Specifically, we encourage the Office of Management and Budget (OMB) and the Departments of Homeland Security (DHS), Justice (DOJ), and Health and Human Services (HHS) to consider the following six priority recommendations while developing the FY2024 budget:

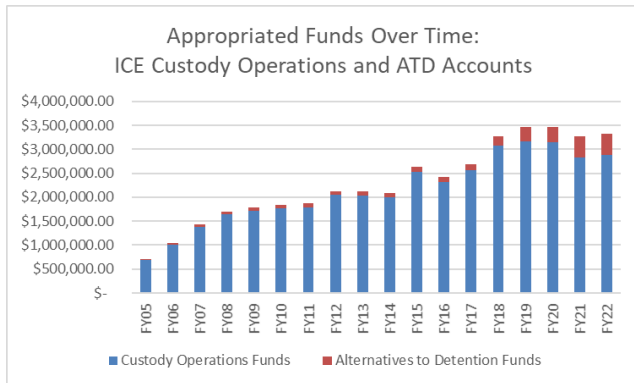
1. Decrease funding for detention and surveillance of immigrants while increasing funding for community-based case management;
2. Provide legal representation for all indigent immigrants facing removal, including children, adults and families;
3. Decrease the size of the Immigration and Customs Enforcement (ICE) and Border Patrol (USBP) agent corps and reduce funding for border surveillance programs;
4. Provide U.S. Citizenship and Immigration Services (USCIS) adequate funding to reduce its growing backlog and ensure a fair and efficient immigration and asylum system;
5. Increase existing funding and develop new funding streams for communities and nonprofit organizations that form an essential component of the United States' ability to respond to new asylum seekers and refugees; and
6. Ensure separated families successfully reunify by allocating funds for the provision of comprehensive and holistic services.

This letter addresses each priority in turn.

I. Fund a more humane immigration policy: decrease funding for detention and surveillance-based monitoring; increase funding for community-based case management

Since DHS’s creation nearly twenty years ago, the taxpayer dollars devoted to the detention and surveillance of immigrants in civil immigration proceedings have grown exponentially. From 2005 to 2022, the appropriated funding for ICE Custody Operations more than quadrupled, and funding for ICE’s Alternatives to Detention budget line item increased by a factor of thirty-one.

This dramatic increase in spending has not reduced the use of detention and is not justified by evidence or facts. Immigrants with deep ties to their communities and newly-arrived asylum seekers are highly motivated to appear in court to seek the protection and stability they need to



remain in this country. Evidence-based analyses confirm that legal and social support services are the best way to ensure that people navigating immigration court proceedings understand their rights and obligations, not harsh detention and surveillance policies.

Research on immigration court data reveals that upwards of 80% of all immigrants voluntarily appear for their hearings,¹ and

compliance rates approach 100% for those with legal representation.² When immigrants do miss their hearings, it is often because of government errors such as deficient notice of court dates and times, government failures to record immigrants’ addresses, or because the individual lacks legal and social support to overcome geographical, housing, mental health or other personal obstacles to making it to court.³

1. *The FY2024 budget should seek significantly decreased funding for ICE Custody Operations.*

The use of mass detention for immigration processing was anomalous for much of the 20th century. The growth of ICE’s network of private prisons and jails has been largely driven by private prison lobbying and has proven harmful and even deadly for those detained.⁴ Years of congressional, administrative, and external oversight efforts have made clear that the harms of ICE custody have not been and cannot be repaired.⁵

Continuing to funnel taxpayer dollars to an unnecessary network of jails that threaten the health and safety of those detained is bad governance. We were pleased to see the White House’s

proposed FY2023 budget include a requested decrease in funding for immigration detention from FY2022 levels, down from funding to support the detention of 34,000 individuals daily to 25,000. Requesting a further decrease in FY2024 would achieve both the government's fiscal responsibility and advance its immigration goals.

- 2. The DHS budget appendix should include section 219 of the Senate's FY2023 draft DHS appropriations bill, limiting unnecessary prolonged detention.*

ICE currently considers more than one-half of the detained population to be subject to statutory provisions requiring mandatory detention or custody.⁶ DHS maintains vast discretion to consider release with conditions for these populations, but has historically failed to do so. For people in ICE custody, prolonged detention without any access to review leads to significant distress and, in many cases, deteriorating mental health.

Section 219 of the Senate's proposed FY2023 DHS spending bill clarifies that Congress intends ICE to maintain the authority to conduct individualized assessments for all people in custody, and clarifies that the definition of "custody" in the immigration context "does not necessarily mean detention" but can be met through release under conditions, mirroring the definition in the criminal context. DHS should request inclusion of this provision in the FY2024 spending bill.⁷

- 3. The White House and DHS should significantly decrease the funding request for ICE's Intensive Supervision Appearance Program (surveillance-based monitoring), and develop a plan for phasing the program out in favor of more appropriate alternatives to detention.*

As ICE detention grew exponentially in recent years, so did ICE's purported "Alternatives to Detention" (ATD) programming known as the Intensive Supervision Appearance Program (ISAP), a surveillance-based program that largely relies on electronic monitoring and has generally not served to reduce the use of detention. The Biden administration's expansion of ISAP has been extraordinarily fast, with little apparent oversight or analysis of methodology. ICE reported a total of 87,439 people enrolled on ATD technology as of January 30, 2021; today there are more than 300,000 people enrolled (316,700 as of September 24, 2022).⁸

In 2015, a collaborative of more than 400 civil society organizations known as the International Detention Coalition (IDC) completed an analysis of more than 250 examples of alternatives to detention programming in 60 different countries.⁹ The IDC found that successful ATD models engage individuals in the immigration process through informative and community-supported programming, contributing to "positive compliance, case resolution, cost, and health and wellbeing outcomes." Hallmarks of successful programs include case management support centered around individualized needs assessments, robust referrals to community-supported

services, and imposing the least onerous possible restrictions and compliance obligations on participants.

ISAP programming stands directly in contravention of these internationally established best practices by imposing unnecessarily onerous obligations with little attention paid to individualized needs assessments. Currently, all but .1% of ISAP participants are enrolled in mandatory, onerous technology programs, including GPS-based ankle monitors, telephonic reporting requirements, or — by the far the most common — the SmartLink application, which relies on facial recognition software and can require participants to check in regularly or at any time without notice. Case management services are available only as an “add-on” to these programs, and are often not steeped in the kind of best practices described above.

Emerging studies and literature raise significant privacy and civil rights concerns regarding ISAP. ISAP’s onerous reporting obligations are often perceived as associated with criminal conduct, making it harder for individuals to obtain and maintain employment.¹⁰ Further, the ISAP program is run by BI Inc., a wholly owned subsidiary of the private prison giant GEO Group. A 2022 in-depth investigation of BI by *The Guardian* revealed that the for-profit nature of the program results in over-worked ISAP staff who are actively disincentivized from providing participants with individualized services.¹¹

We urge the White House and DHS to change course and request a shift in funds away from the ISAP program and into case management programming operated by experienced, trusted community-based non-profit service providers. Excellent options exist to support this transition, discussed below.

4. *The FY2024 budget should propose increased funding for community-based case management and support services, including through the FEMA-CRCL Case Management Pilot Program and/or an HHS-funded Asylum Seeker Case Management Program.*

Funds moved away from detention and surveillance-based monitoring should be invested in programs that generate community trust and provide tailored, individualized support to participants who are navigating the U.S. immigration system. Critically, in order to advance these goals, case management and humanitarian support programming *must* be administered and funded outside of ICE and CBP. In June 2021, ICE issued a Request for Information for a proposed National Case Management Program. A group of more than 80 non-profit organizations that provide services and advocacy for immigrant populations responded, “wholeheartedly” endorsing the “concept of providing opt-in community-based support services to assist those in the immigration process” but expressing “deep concerns over the ability of such

community-based services to be provided meaningfully and successfully if housed in and funded by ICE.”¹²

We urge the administration to request increased funds for the DHS Case Management Pilot Program (CMPP), an existing program that provides an alternative model for immigration processing and support that meets the best practices described above.

CMPP is funded through the Federal Emergency Management Agency (FEMA) and managed by a National Board chaired by the DHS Officer for Civil Rights and Civil Liberties and including non-profits known and trusted by immigrant and refugee communities. We see great promise for this program to grow and flourish under the stewardship of organizations whose missions are oriented toward meeting the individualized needs of immigrants and asylum seekers as they navigate the United States immigration system. We urge the White House and DHS to significantly increase requested funds for this important program, while ensuring independent monitoring and evaluation to identify both best practices and areas for improvement in the future.

We further support the development of an Asylum Seeker Case Management Program funded through HHS, as proposed in the FY2023 Senate DHS draft bill.¹³ Through the Office of Refugee Resettlement, HHS has the appropriate orientation and expertise to develop and support programming for arriving asylum seekers that would draw from the services provided through the agency’s refugee resettlement programming.

II. Fund due process: provide sufficient funds to ensure legal representation for all indigent adults, families and children facing removal

More than one million people are currently navigating the immigration court system without a lawyer – more than 55% of the entire population in proceedings.¹⁴ Legal counsel is proven to drastically increase the prospect of a person winning relief.¹⁵ Legal representatives also play a crucial role by making clients aware of the often complex rules and procedures in immigration court.¹⁶ Although immigration law is civil in nature, its consequences are severe and life-changing. Winning or losing in immigration court can determine whether a person is permanently separated from their loved ones.¹⁷ For asylum seekers, the wrongful denial of protection can — and often tragically does — mean deportation to one’s death.¹⁸ It is particularly shameful that after decades of outcry, unaccompanied toddlers and children continue to appear in U.S. immigration courts, opposite a federally funded prosecutor, without a lawyer beside them.¹⁹

1. *The White House and Department of Justice (DOJ) should continue to pursue the legal representation funding sought in the FY2023 budget, including robust funding for legal access programs as well as new funding to ensure all indigent people facing removal are provided lawyers.*

We were pleased to see the FY2023 budget proposal maintain significant investments in legal access and orientation programming while seeking funds to develop a funded representation program for adults, families and children, with an envisioned mandatory spending component to reach full representation over a ten-year period. We urge the White House and DOJ to continue and expand the FY2023 legal services proposals in its FY2024 budget, and to work closely with congressional appropriators to ensure such funding is included in a final spending bill.

2. *The White House and the HHS should continue to pursue the legal representation funding sought in the FY2023 budget for unaccompanied children, including robust funding for post-release services and child advocates and sufficient funding to ensure universal representation for all unaccompanied children facing removal.*

A network of non-profit legal service providers is currently funded by the Department of Health and Human Services to ensure that unaccompanied children are provided legal orientations as they enter into the custody of the Office of Refugee Resettlement. However, this funding does not extend to guaranteed legal representation, leaving many children to ultimately navigate their final immigration court hearing without a lawyer.²⁰

We were pleased to see the White House and HHS include in the FY2023 budget proposal a request for funding sufficient to maintain robust post-release services and child advocates, with an envisioned mandatory proposal to ensure that all arriving unaccompanied children are provided legal representation by FY2027. We urge the White House and HHS to continue and expand these FY2023 proposals in its FY2024 budget, and to work closely with congressional appropriators to ensure such funding is included in a final spending bill.

III. Right-size the immigration budget: decrease CBP surveillance programs and ICE and Border Patrol's over-sized agent corps

Since DHS's creation less than twenty years ago, funding has increased dramatically for CBP and ICE agents and for surveillance technology that has essentially militarized the southern border. Much of this funding reflects a shift in U.S. immigration policy that dates back to 1994, when the Clinton administration began to embrace intentionally harsh immigration policies as a way to "deter" future migration. These policies, however, have failed both in terms of the stated deterrence goals and because of the harms and deaths they routinely cause.²¹ Migration data reveals on its face that deterrence-based policies have not resulted in a significant and sustained

reduction of overall numbers of unauthorized migration.²² Second, and more importantly, these policies have created an increasing death toll, with a record number of deaths this year as harsh border policies push people toward ever-more-dangerous routes to seek safety.²³

The number of Border Patrol agents has doubled and the number of ICE officers has tripled since 2003.²⁴ These increases, combined with rampant corruption and abuse and the harsh policies described above, have created a pervasive climate of fear among immigrant and border communities and have contributed to the erosion of constitutional and civil rights for people living and visiting the borderlands.²⁵ Meanwhile, agreements to deputize local law enforcement agencies to engage in immigration enforcement actions under the 287(g) program continue to exacerbate racial profiling and other unconstitutional and abusive local police practices.²⁶ At the southern border and northern border and far into the interior of the United States, DHS surveillance technologies threaten the privacy and civil liberties of U.S. citizens and noncitizens alike.²⁷ Development of a so-called “smart wall” — *and the continued construction of border wall miles* — continues to harm wildlife, interrupt tourism, contribute to injuries and deaths along the border, and disproportionately impact Brown, Black and Indigenous communities.²⁸

1. The FY2024 budget proposal should sharply reduce DHS surveillance technologies.

We urge the White House and DHS to seek decreased funding for CBP surveillance programs that harm border communities and have not been shown to impact migration patterns, including: biometric surveillance collection programs, unmanned aerial vehicles, automatic license plate readers, facial recognition technology, tethered blimps, thermal imaging technology, surveillance towers, and wide-area surveillance.

2. The FY2024 budget should request significantly scaled down funding for both ICE and Border Patrol agents, and should include a plan to terminate the 287(g) program and phase out all existing 287(g) agreements.

We urge the White House and DHS to acknowledge that the past two decades’ dramatic and abrupt increase in funds for immigration enforcement has resulted in a CBP and ICE work force that is overly focused on harsh enforcement. The FY2024 budget should propose decreased funding for the ICE and Border Patrol agent corps, and propose a funding scheme to ensure the full phase out of the 287(g) program.

- 3. The FY2024 budget should not include any funding for border wall construction and instead increase more funds to mitigate environmental and other harms caused by the construction of 18- to 30-foot tall border walls.*

We urge the White House and DHS to acknowledge the lethal consequences of border wall construction, which forces people seeking safety to cross in more remote and dangerous areas and interferes with the migration patterns of wildlife, including many endangered species. Furthermore, there has been a seven-fold increase in deaths from falls from these higher border walls. Only four deaths were attributed to falls from border walls between 2012 and 2019. Between 2020 through 2022 (to date), there have been 26 such deaths. We urge the White House and DHS to push back against any border wall construction funding proposals in the final FY2024 spending bill.

IV. Ensure a fair and efficient immigration and asylum system: request sufficient funding for USCIS to promptly reduce the growing backlog and ensure efficient intake and processing

USCIS is facing a significant case backlog and processing times that have sharply increased in recent years. This has resulted in individuals falling out of status, families being separated, and businesses losing needed employees. The most recent data confirms that the agency had more than 8,500,000 applications and petitions pending as of March 2022, including over 1,500,000 applications for employment authorization.²⁹ Overall processing times grew by approximately 50 percent between FY2017 through FY2021³⁰ and have continued to grow for most form types during FY2022.³¹ Processing times have been steadily growing for many years, but delays for certain high-volume forms have increased dramatically in recent years.

Increased funding from Congress is necessary and proven to help address the dire consequences of these issues on families, employers, and workers throughout the United States. For example, in FY2022, USCIS was able to use additional appropriated funding to authorize overtime, increase staffing, and leverage new processes in order to adjudicate double the amount of immigrant visas than in years past.

- 1. The FY2024 budget should provide increased and targeted funding of at least \$400,000,000 to address backlog reduction, intake delay, and facilitate efficient processing of cases at USCIS asylum, field, and service center offices.*

While Congress appropriated a total of \$275,000,000 for USCIS backlog reduction in FY2022, it is still far less than the full \$345,000,000 requested in President Biden's formal budget that year, and significantly less than what will be necessary to fully address the processing issues currently plaguing the agency. Given the size of USCIS's backlog and its current rate of growth, its

expenditure plan for FY2022 indicates that the initial funding of \$250,000,000 provided by Congress for FY 2022 will only be sufficient to address approximately 13 percent of the agency's net backlog.³² We were pleased to see that in both the FY2023 President's Budget and the FY2023 House DHS funding bill, funding had once again been allocated for backlog reduction and application processing. However, the amount proposed is insufficient, as backlogs continue to grow.

To ensure efficient reduction in the agency's backlog and the restoration of our system of legal immigration, the DHS budget must include targeted and consistent funding for backlog reduction and processing efficiency in FY2024 and beyond. In FY2024, the President's Budget should request at least \$400,000,000 specifically for application processing and the reduction of backlogs within USCIS asylum, field, and service center offices, as well as intake delays.

2. The FY2024 budget should request appropriated funds for DHS to provide regular reports detailing how appropriated funding is being utilized, as well as its impact on backlog reduction and overall efficiency.

In addition, DHS should support requests for continued appropriations by providing regular reports detailing USCIS's use of funds targeted for backlog reduction and the impact of appropriated funds on both the backlog and overall intake and processing efficiency. The information provided can be similar to that requested in the Case Backlog and Transparency Act of 2020.³³ USCIS should also provide regular updates on the use of funds to support initiatives such as electronic processing, a review of form length and content to reduce unnecessary delays in filing and adjudicating applications and petitions, and improvements in transparency and customer service for customers facing significant delays. Continued updates on the agency's efforts to address these issues and the impact of appropriated funds will help support future funding requests.

V. Support a nationwide response to arriving asylum seekers: increase federal funding to state and local governments and organizations assisting newly-arrived migrants

In recent years, Congress has provided funds through FEMA's Emergency Food and Shelter Program (EFSP) to support local communities and nonprofits assist newly arrived migrants as they transition away from the border and move to other locations in the United States where they will pursue asylum. Over the last year, the demand for this funding has increased significantly with the arrival of more migrants from countries like Venezuela, who do not have a sponsor in the United States and require more intensive integration assistance. The geographical scope and nature of the demand for this funding has also shifted as anti-immigrant governors have begun bussing tens of thousands of migrants away from the border to other cities.

1. *The FY2024 budget should pursue a significant increase in funding for EFSP to support newly-arrived migrants released from DHS custody who need assistance navigating the asylum process.*

In FY2022, EFSP was funded at \$150 million for organizations providing food, shelter and other respite care to migrants who have recently arrived to the United States. This funding has proved *critical* for service organizations who remain woefully underfunded to meet the housing, food, social service, and mental health needs of arriving asylum seekers, many of whom have recently fled trauma. As the demand for this funding has increased steadily throughout 2022, it is certain that the \$150 million fund will prove insufficient and more funding will be necessary in 2023 and in 2024. The FY2024 budget should anticipate this shift and request a significantly higher amount.

2. *The White House and DHS should develop a long-term sustainable funding program to replace the use of EFSP for migration assistance.*

We urge the White House and DHS to significantly increase requested funds for EFSP while working closely with appropriators to develop a long-term sustainable funding program that is designed specifically to assist communities and organizations that assist newly-arrived migrants. EFSP funding has significant restrictions on use and is reimbursement-based only, which creates a barrier for many communities to build new infrastructure to respond to migrants, especially smaller community-based organizations. A custom-designed FEMA fund would better respond to the unique needs of the non-governmental organizations and communities who form an essential component of the United States' ability to process asylum seekers and refugees both efficiently and with dignity.

VI. Ensure separated families successfully reunify: allocate funds for the provision of comprehensive and holistic services

Thousands of children separated from their parents during and after “Zero Tolerance” and related policies have yet to be made whole from a policy perpetrated by officials within DHS and DOJ. Although some funds have been set aside to provide behavioral health services to reunifying families, those funds do not address families' most immediate needs and will be of limited use to families if they lack income and housing. Bringing families back without an individualized assessment and service plan for relocation and reunification and without resource support is setting them up to fail and further endangering the parent-child relationships that were violated by the prior Administration.

1. *The White House should seek increased funds in FY2024 to USCIS to fast-track work authorizations for all separated family members and related beneficiaries.*

Without immediate work authorization and support for basic needs, many families cannot and will not be successfully reunited.

2. *The FY2024 budget should seek new designated funds for HHS to provide housing for at least six months for returning and recently returned families who lack work authorization immediately upon arrival and therefore cannot work to pay rent.*

Parents who have already returned are currently struggling with lack of support, and some are at real risk of homelessness and further crisis. Funding for reunified or reunifying families' basic needs should also be sufficient to cover food and clothing assistance; transportation; technology; medical care and language access services.

Moreover, because each family's needs are unique, we recommend that the White House allocate funding to HHS for intensive and holistic, or indigenous holistic, case management services to ensure the basic needs of families — especially those returning to the United States — are met so that reunification can occur in a safe and stable setting. These services should include: mental health and psychosocial services support, including counseling, evaluation, prescription medicine, and peer support; legal services, including immigration counsel for all families and family law attorneys as needed; and additional services including employment assistance programming, education support, childcare vouchers, and community navigators and cultural orientation.

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We appreciate your attention to these matters and would welcome the opportunity to meet with you to discuss these priorities at greater length. With questions or for scheduling, please contact Heidi Altman at the National Immigrant Justice Center at haltman@heartlandalliance.org.

Sincerely,

American Immigration Council
American Immigration Lawyers Association
Asylum Seeker Advocacy Project (ASAP)
Church World Service
Freedom for Immigrants (FFI)
Immigrant Legal Resource Center
Immigration Hub

National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
Southern Border Communities Coalition
Women’s Refugee Commission
UndocuBlack Network
United We Dream
Vera Institute of Justice
Young Center for Immigrant Children’s Rights

Endnotes

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