

**Immigration Priorities for a Just Budget in 2023**  
**Deep Dive: Fund Appointed Counsel**  
**September 14, 2021**

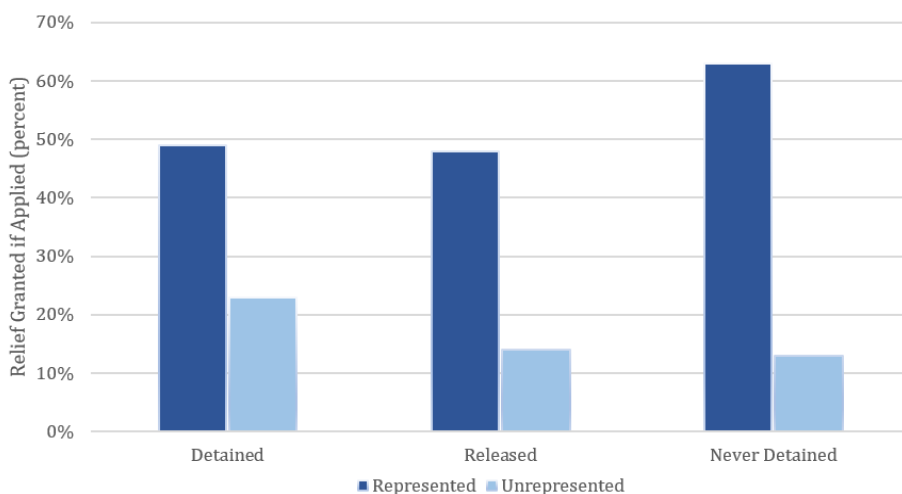
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***The Biden administration should significantly expand federal immigration legal representation programs. For Fiscal Year (FY)2023, the administration should request at least \$400 million for the Department of Justice (DOJ) to provide legal representation at government expense to individuals facing removal. The administration should also request at least \$400 million to provide legal representation, post-release services, child advocates, and other services to unaccompanied children within the Department of Health and Human Services (HHS) budget.***

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**Context and State of Play:** While federal law ensures the right to legal counsel in removal proceedings, the law does not guarantee the government will pay for counsel if immigrants are unable to afford a private attorney. As a result, as of the end of July 2021, there were over 586,000 cases [pending](#) before the nation’s immigration courts (43% of all cases) in which the non-citizen facing deportation is unrepresented. Without representation, it is nearly impossible for immigrants to navigate our complex immigration laws and system. As [studies consistently show](#), these already extreme figures are even higher for detained individuals, among whom 70 percent did not have legal counsel between 2015 and 2017. Critically, immigrants with representation are also more likely to succeed in obtaining relief for which they qualify to defend against their deportation. A 2016 [study by the American Immigration Council](#) found that immigrants were *five times more likely* to obtain legal relief if they were represented by counsel. People who were detained were ten-and-a-half times more likely to succeed if represented by counsel (see Figure 1 below). Data from the Executive Office for Immigration Review (EOIR) also showed that unaccompanied children with attorneys were 70 times more likely to obtain legal relief in immigration court than unrepresented unaccompanied children.<sup>11</sup>

**Figure 1: Immigrants with Representation Are More Likely to be Granted Relief**  
Applications for Relief Granted, by Detention and Representation Status, 2007-2012



**Source:** American Immigration Council, *Access to Counsel in Immigration Court* (2016)

In addition to making proceedings fairer, providing legal representation advances the government's interest in reducing other costs and ensuring efficiency in the detention and removal system. Increasing legal representation would dramatically reduce costs associated with immigration enforcement, detention, and court proceedings. [Studies](#) of over a decade of government data have found that people represented by counsel appear for their hearings over 96 percent of the time because a lawyer can help them navigate a complex system generally conducted in a language that is often not their own. People who are represented by counsel are also typically [more prepared to proceed in their legal cases](#) and less likely to request continuances. The most common reason *pro se* individuals request continuances is to [seek counsel or prepare their case](#). When combined, these factors mean that expanded legal representation will reduce the time judges spend on each case and contribute to more efficient court processing.

Investments in these programs at the federal level are long overdue. Over the past few years, more than 40 states and localities have stepped in to fill this need by launching their own programs to provide legal representation to individuals facing removal proceedings. For instance, California currently allocates over \$50 million in funding per year to immigration legal services (including representation in immigration court).<sup>[2]</sup> While the current state and local programs provide a critical safety net for some of the individuals facing deportation hearings, federal funding is sorely needed to help address a national need on an issue squarely in the purview of the federal government.

Both the Biden administration and Congress have begun to recognize the importance of funding legal representation for vulnerable individuals facing removal proceedings. In its FY 2022 budget submission to Congress for DOJ, the administration requested \$15 million for legal representation of families and children. This amount is not nearly enough to increase the fairness of the immigration detention and removal system. \$15 million would serve only several thousand individuals—far below the current need.<sup>[3]</sup>

The U.S. House of Representatives has also approved funding for appointed counsel. In 2020, the Commerce, Justice and Science Appropriations Act that passed the House of Representatives (H.R. 7667) included \$15 million for a pilot program for the representation for arriving asylum seekers. More recently, the House Appropriations Committee provided \$50 million for legal representation programs in the Commerce, Justice and Science Appropriations bill in July of this year (H.R. 4505). Congress has also approved funding for representation for unaccompanied children facing removal proceedings. \$212 million was appropriated for FY 2021 to the Administration for Children and Families (ACF) within HHS for legal services, child advocates, and post-release services for unaccompanied children. The FY 2022 House Appropriations Committee's Labor, Health and Human Services, Education, and Related Agencies bill report sets aside \$300 million to ACF for legal services, child advocates, and post-release services for unaccompanied children.

**Budgetary Ask:** The Biden administration should request at least \$400 million for DOJ to fund a nationwide appointed counsel program. The administration should also request at least \$400 million for the unaccompanied children's program run by HHS which provides legal services, post-release services, child advocates, and other services. Funding at these levels would enable significant improvement in the availability and quality of existing legal representation programs. In

FY 2023, the funds should be targeted to expand legal services for vulnerable individuals, including but not limited to people who are detained or have been detained in immigration detention or border facilities, children ages 21 and younger, asylum seekers and people seeking humanitarian protection, people who speak less common languages, individuals with mental disabilities, the disabled, and people whose income is below 200 percent of the federal poverty guidelines. Existing programs serve two specific populations: people with mental disabilities (via the NQRP program funded through DOJ in EOIR) and unaccompanied children (funded through HHS in the Office of Refugee Resettlement).

The \$400 million for the DOJ nationwide appointed counsel program is necessary to serve adequate numbers of people in urgent need and would greatly reduce federal government costs for detention, enforcement and immigration court operations. The requested increase in funding for HHS legal services for unaccompanied children is also necessary given the persistent shortfall in legal representation for this vulnerable population—a shortfall poised to grow substantially amid the record number of unaccompanied child arrivals to the U.S. this fiscal year. In addition, regular and progressively larger increases will be needed in subsequent years to enable the federal government to provide legal representation for *all* indigent people facing removal.

**Policy Asks:** The administration's FY 2023 budget should seek broad discretion for DOJ and HHS to implement legal representation programs that serve *all* indigent people facing removal, with initial emphasis given to vulnerable individuals. This discretion will give DOJ and HHS much-needed flexibility to target programs to meet fluctuating and unpredictable needs.

With respect to the DOJ funding request, the administration must avoid defining eligibility in any manner that would limit the provision of legal representation only to children and families or concentrate resources on those populations. Unaccompanied children are a highly vulnerable population that needs legal representation, but the HHS-funded Unaccompanied Children representation program already serves this population. While the program should be expanded, programs providing legal representation to adults require urgent attention and commensurate funding due to the much larger adult unrepresented population and the lack of nearly any federal funding for adult legal representation (with the exception of the NQRP).

The administration should also allow legal representation under this proposed funding to be provided to asylum seekers who are processed under the standards set forth in the proposed regulation (86 FR 46906, 8/20/21), if/when finalized.

The administration should also work to ensure that programming is operated by non-profit organizations or public defender offices with experience and expertise in providing legal representation to immigrant communities. The allocation of funding should be sufficient to assign representation for the duration of the removal case (including custody and appellate matters) and include collateral representation on matters pertinent to the removal proceeding. Representation should begin when someone is taken into custody, not only when a Notice to Appear is issued or filed. This will help address the large number of people in detention who are not in proceedings and people released from custody who need representation before or after they have an immigration case in court.

## Resources:

- American Immigration Council, *Access to Counsel in Immigration Court*, 2016, <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>
- Vera Institute, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, 2018, <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf>
- Vera Institute, *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity*, 2017, <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>.

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## Endnotes:

[1] This figure was calculated based on EOIR data covering FY 2018 and the first half of FY 2019 and published by the Congressional Research Service in its report titled “*Unaccompanied Alien Children: An Overview*,” p. 15 (Oct. 9, 2019); <https://fas.org/sgp/crs/homesec/R43599.pdf>.

[2] See [AILA and American Immigration Council, “Policy Brief: The Biden Administration and Congress Must Guarantee Legal Representation for People Facing Removal,” January 2021.](#)

[3] For comparison, the New York Immigrant Family Unity Program, funded by the city council, receives almost \$17 million and serves a few thousand primarily detained individuals. See *Id.*