

United States Senate

WASHINGTON, DC 20510-3205

May 6, 2022

The Honorable Jeanne Shaheen
Chairwoman
Appropriations Subcommittee on
Commerce, Justice, Science,
And Related Agencies
Washington, DC 20510

The Honorable Jerry Moran
Ranking Member
Appropriations Subcommittee on
Commerce, Justice, Science.
and Related Agencies
Washington, DC 20510

Dear Chairwoman Shaheen and Ranking Member Moran:

As you begin to craft the Fiscal Year (FY) 2023 U.S. Department of Justice funding bill, we respectfully request that you provide no less than \$400 million for legal services within the Executive Office for Immigration Review (EOIR) to provide legal representation to the extremely vulnerable population of indigent adults facing immigration court proceedings.

There is no right to a government-provided attorney in immigration court. Individuals who appear in immigration court must pay for an attorney or go without representation – often in a language they do not understand while navigating complex rules and regulations against well-trained U.S. government attorneys. Despite the critical role of legal counsel, [nationwide 56 percent](#) of all people appearing in immigration court are unrepresented by counsel, and a [staggering 81 percent](#) of detained persons face proceedings without counsel. Such unfair barriers create serious due process concerns – which is even more compelling when many cases involve potential life or death consequences.

Ensuring legal representation would dramatically reduce the government’s costs for detention, enforcement operations, and court proceedings. The U.S. immigration court backlog is now 1.7 million cases,¹ and there is an urgent need for the enhanced efficiency afforded by attorneys. Legal representation of vulnerable groups prevents waste of judicial time and resources by screening out inapplicable forms of protection and minimizing unneeded court time. Recent studies have also confirmed that non-citizens with representation are far more likely to comply with court appearance requirements. [Studies](#) of over a decade of EOIR data have found that people represented by counsel appear in court over 96 percent of the time, as a lawyer can help them navigate a complex system. Non-citizens who *are* represented by counsel are typically [more prepared to proceed in their legal cases](#), as the most common reasons pro se individuals request continuances [are to seek counsel or to prepare their case](#). Legal counsel can also assist with identifying family or community members to whom an individual could be

¹ TRAC, “Immigration Court Backlog Tool” (through April 2022); https://trac.syr.edu/phptools/immigration/court_backlog/.

released. All these factors reduce the time judges spend on each case and contribute to more efficient court processing.

The impact of court-appointed lawyers will help transform the U.S. immigration court system. Currently the federal government operates pilot legal representation programs that serve two populations: unaccompanied children and people with mental disabilities. We recommend funding \$400 million for the Executive Office for Immigration Review (EOIR) as an incremental step to expand government-funded legal representation programs to a larger population of indigent adults. In July 2021, the House Appropriations Committee provided \$50 million for legal representation programs in the Commerce, Justice and Science Appropriations bill (H.R. 4505). The President’s FY 2023 budget includes a total of \$600 million for EOIR for legal representation (\$150 million in discretionary funds and \$450 million in mandatory funds).

We request, as well, that you include the following language in the Committee’s FY 2022 report:

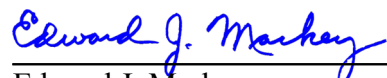
“Access to Counsel” – The Committee is concerned that the extremely low rate of representation for non-citizens in immigration court proceedings is compromising the fundamental fairness and integrity of the legal process. The recommendation therefore includes no less than \$400,000,000 for EOIR to provide legal representation at government expense for non-citizens in removal proceedings whose income is at or below 200 percent of the poverty line. The Committee recommends that EOIR, in order to facilitate the provision of qualified and independent counsel, ensure that representation is provided by non-profit organizations, private practitioners, and public defender offices with experience and expertise in providing legal representation to immigrant communities, and that funding per case be sufficient to assign representation for all aspects of the individual’s immigration proceedings and collateral matters.

Thank you for your strong support and leadership to strengthen the provision of counsel and for considering our request.

Sincerely,



Kirsten Gillibrand
United States Senator




Edward J. Markey
United States Senator



Cory A. Booker
United States Senator



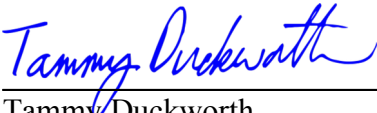
Sherrod Brown
United States Senator



Tammy Baldwin
United States Senator



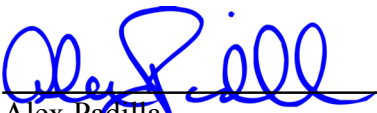
Tina Smith
United States Senator



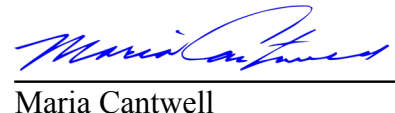
Tammy Duckworth
United States Senator



Raphael G. Warnock
United States Senator



Alex Padilla
United States Senator



Maria Cantwell
United States Senator



Elizabeth Warren
United States Senator



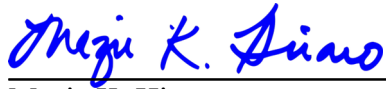
Bernard Sanders
United States Senator



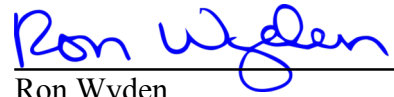
Mark Kelly
United States Senator



Robert Menendez
United States Senator



Mazie K. Hirono
United States Senator



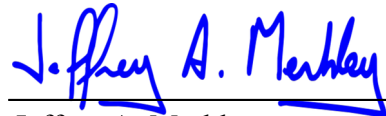
Ron Wyden
United States Senator



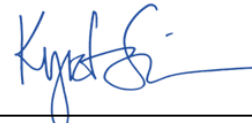
Amy Klobuchar
United States Senator



Thomas R. Carper
United States Senator



Jeffrey A. Merkley
United States Senator



Kyrsten Sinema
United States Senator