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U.S. Immigration Courts: Access to Counsel in Removal Proceedings and Legal Access Programs

Immigration courts are within the Department of Justice’s Executive Office for Immigration Review (EOIR). During removal proceedings in immigration courts, immigration judges (IJs) determine whether noncitizens (*respondents*) charged with an immigration violation by the Department of Homeland Security are removable and, if so, whether they qualify for relief from removal, such as asylum.

Removal proceedings are conducted under Section 240 of the Immigration and Nationality Act (INA). INA Section 240(b)(4) states that respondents “shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceeding.” That is, respondents may obtain counsel at their own expense or pro bono; the federal government generally may not provide counsel.

Authorized Representatives

EOIR is required to provide respondents with a list of free or low-cost legal service providers (8 C.F.R. §1003.61(b)). Persons eligible to represent respondents in immigration court, specified in 8 C.F.R. §1292.1, include

- attorneys registered to practice with EOIR;
- *accredited representatives* registered to practice with EOIR (explained below);
- U.S. law students and graduates not yet admitted to the bar appearing under the supervision of a faculty member, licensed attorney, or accredited representative;
- reputable individuals of good moral character, with a pre-existing relationship to the respondent, appearing without remuneration; and
- accredited officials of foreign governments who are in the United States.

Otherwise, unrepresented individuals represent themselves in court (*pro se* appearances).

Recognition & Accreditation (R&A) Program

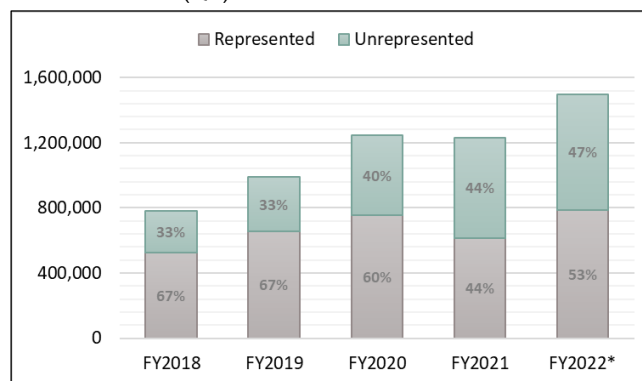
Non-attorneys can become accredited representatives through EOIR’s R&A program and provide legal services through nonprofit, tax-exempt *recognized organizations*. EOIR states the program “aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice.”

Rates of Representation and Relief Outcomes

As of FY2022, Q1, approximately 53% of all respondents with pending cases had representation. The proportion of represented respondents has generally decreased since FY2018 (the earliest available data). During this period, the

overall number of pending cases has increased (**Figure 1**). Representation rates for asylum seekers are substantially higher. At the end of FY2022, Q1, 84% of asylum cases pending in immigration courts were represented.

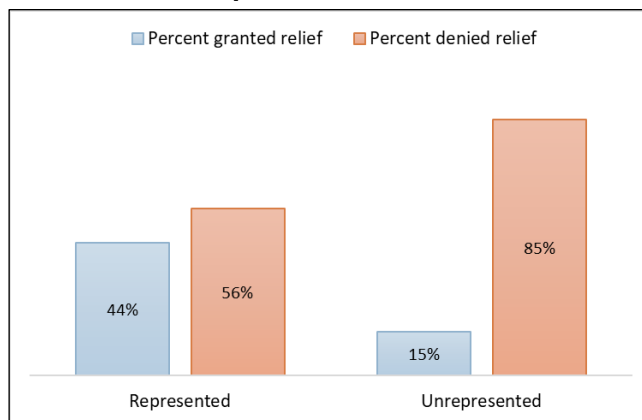
Figure 1. Pending Cases by Representation Status FY2018-FY2022 (Q1)



Source: EOIR, “Current Representation Rates,” Adjudication Statistics, multiple years (*FY2022 through first quarter).

Among cases in which respondents filed asylum applications during the last 10 fiscal years, the rates of asylum and other forms of relief granted in unrepresented cases (15%) were about 66% lower than the rates of relief granted in represented cases (44%) (**Figure 2**).

Figure 2. Relief Grants and Denials by Representation Status, FY2013-May 2022



Source: Transactional Records Access Clearinghouse (TRAC) at Syracuse University, “Asylum Decisions,” data tool, June 2022.

Notes: TRAC receives data from EOIR via the Freedom of Information Act. *Relief* refers to grants of asylum and other relief.

Some have raised concerns about circumstances that pose barriers to obtaining counsel, such as being detained.

Research examining detained cases decided between 2007 and 2012 found that represented detained respondents were 10.5 times more likely to succeed in their cases than those who were unrepresented (Ingrid V. Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review*, vol. 164, no. 1 [2015]). Represented respondents were also more likely to appear for their hearings.

Other populations for which some have expressed concerns about legal representation include those held in Mexico under the Migrant Protection Protocols, those placed on accelerated dockets (e.g., the *Dedicated Docket* for family units apprehended at the Southwest Border), and children.

Opposition to Publicly Funded Counsel

The Sixth Amendment guarantees the right to counsel only for those in criminal proceedings. Opponents of federal funding for immigration counsel argue that noncitizens in removal proceedings should have no right to publicly funded representation because these are civil proceedings. They contend that providing counsel to those in removal proceedings would therefore confer a disproportionate benefit to noncitizens at taxpayers’ expense. Others have opposed state and local funding for representation on the basis that immigration is a federal policy issue.

EOIR Legal Access Programs

EOIR’s Office of Legal Access Programs houses several initiatives that facilitate access to legal information and referrals. Many of these programs are administered by the Vera Institute of Justice (Vera), a nonprofit organization.

Legal Orientation Program (LOP)

Through LOP, legal service providers offer legal orientation to detained respondents. The program includes group and individual orientations, self-help workshops for pro se respondents, and referrals to pro bono legal services. According to Vera, LOP operates at 43 immigrant detention facilities in Arizona, California, Colorado, Florida, Georgia, Illinois, Louisiana, Maryland, New Jersey, New Mexico, Pennsylvania, Texas, Virginia, and Washington.

Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC)

LOPC provides legal orientation for the adult caregivers of unaccompanied alien children (UAC) in removal proceedings. The program is a collaboration between EOIR and the Department of Health and Human Services (HHS), Office of Refugee Resettlement, the agency responsible for the care and custody of UAC. The William Wilberforce Trafficking Victims Protection Reauthorization Act (P.L. 110-457, §235(c)(5)) requires HHS, to the greatest extent possible, to ensure that UAC in their custody have counsel. In the first quarter of FY2022, 54% of UAC with pending cases were represented.

Counsel for Children Initiative (CCI)

CCI provides representation for certain unaccompanied children in eight immigration courts: Atlanta, Houston, Los Angeles, New York, San Diego, San Francisco, Seattle, and Portland.

National Qualified Representative Program (NQRP)

In 2013, in the matter of *Franco-Gonzalez v. Holder*, a U.S. district judge found that individuals with serious mental disorders are entitled to a Qualified Representative as a reasonable accommodation during removal proceedings under Section 504 of the Rehabilitation Act (P.L. 93-112). The judge ordered the Attorney General to provide representation to such individuals. Subsequently, EOIR established the NQRP, which provides counsel to respondents who are found by an IJ or the Board of Immigration Appeals (BIA; EOIR’s appellate body) “to be incompetent to represent themselves in proceedings.”

BIA Pro Bono Project

Respondents in removal proceedings may appeal an IJ’s decision to the BIA. EOIR established the BIA Pro Bono Project with the Catholic Legal Immigration Network, Inc., in collaboration with other nonprofit legal organizations. The program matches unrepresented respondents to pro bono representatives when they have cases under appeal.

Model Hearing Program (MHP)

MHP provides trainings for attorneys and representatives practicing in immigration court, with a goal of improving the quality of representation before immigration courts.

Immigration Court Helpdesk (ICH) Program and Immigration Court Online Resource (ICOR)

The ICH program offers nondetained respondents one-on-one information sessions, workshops, pro bono outreach, and group information sessions. According to Vera, ICH operates in 13 immigration courts. EOIR announced ICOR in 2020 as “an expansion of the [ICH] program.” The online tool provides information for respondents and attorneys/representatives practicing before the courts/BIA.

State and Local Programs

Some state and local governments, typically working with nonprofit organizations, have developed programs to provide counsel—particularly for detained respondents—an effort some refer to as *universal representation*. According to Vera, eight states fund counsel for those in removal proceedings (California, Colorado, Illinois, Nevada, New Jersey, New York, Oregon, and Washington). Several local governments have also established such programs.

Relevant Legislation

For several years, lawmakers have introduced measures that would provide government-funded counsel for certain respondents. For example, in the 117th Congress, S. 901 and H.R. 530 would direct agencies to appoint counsel to certain children and “vulnerable” populations.

For more information about immigration courts, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*; and CRS In Focus IF11536, *Formal Removal Proceedings: An Introduction*.

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