

Updated August 6, 2024

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

Immigration courts are administered by the Department of Justice’s Executive Office for Immigration Review (EOIR). During removal proceedings in immigration courts, immigration judges (IJs) determine whether individuals (*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 (free); 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. Persons eligible to represent respondents in immigration court 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

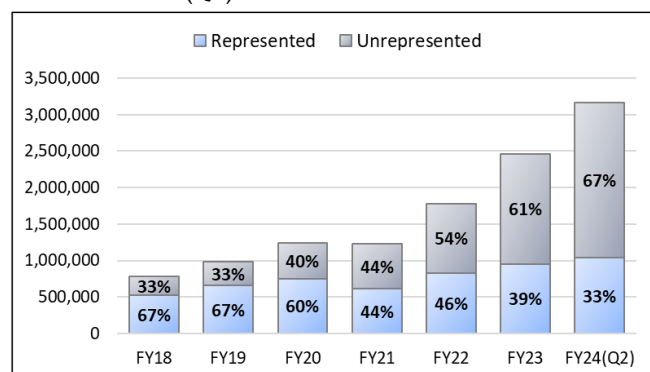
As of March 2024, approximately 33% of all respondents with pending cases had representation. Among cases with at least one hearing adjournment, the rate increased to 52%.

Among proceedings in which the respondent has filed an application for asylum, the representation rate was 69%.

EOIR also reports representation rates for unaccompanied alien children (UAC) of 56% for all pending UAC cases and 61% among UAC cases pending for more than a year as of March 2024.

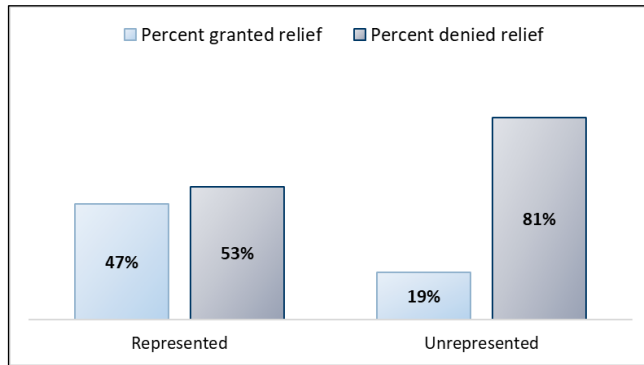
Overall, the proportion of represented respondents has generally decreased since FY2018 (the earliest available data). During this period, the overall number of pending cases has quadrupled, exceeding 3 million, while representation rates have fallen from two-thirds to one-third (**Figure 1**).

Figure 1. Pending Cases by Representation Status FY2018-FY2024 (Q2)



Source: EOIR, “Current Representation Rates,” Adjudication Statistics, multiple years. With the exception of 2024 (Q2), data reflect cases ending at the end of each fiscal year.

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 (19%) were about 60% lower than the rates of relief granted in represented cases (47%) (**Figure 2**).

Figure 2. Relief Grants and Denials by Representation Status, FY2015-May 2024

Source: CRS calculations using the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, “Asylum Decisions,” data tool, July 2024.

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. Represented respondents were also more likely to appear for their hearings.

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 (i.e., because individuals, including U.S. citizens, are not granted counsel in other types of civil cases). Others oppose 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 offers several initiatives that facilitate access to legal information and referrals. Many of these programs (described below) are administered or managed by nonprofit organizations.

Legal Orientation Program (LOP)

Through LOP, legal service providers offer legal orientation to detained adults. The program includes group and individual orientations, self-help workshops for pro se respondents, and referrals to pro bono legal services. LOP operates at 35 immigration detention facilities in Arizona, California, Colorado, Florida, Georgia, Louisiana, Mississippi, New Mexico, Pennsylvania, Texas, Virginia, and Washington.

Legal Orientation Program for Custodians (LOPC)

LOPC provides legal orientation for the adult caregivers of 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 HHS custody have counsel.

Counsel for Children Initiative (CCI)

CCI provides representation for certain unaccompanied children who have been released from custody and are in removal proceedings in certain cities.

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., and with other nonprofit legal organizations. The program matches unrepresented respondents to pro bono representatives when respondents 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 individual and group information sessions, workshops, pro bono outreach, and *friend of the court* services. It operates in 22 immigration courts. ICOR is an expansion of ICH; it provides information for respondents and 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. Some refer to this effort as *universal representation*.

Relevant Legislation

For several years, lawmakers have introduced measures that would provide government-funded counsel for certain respondents. In the 118th Congress, some proposed measures would provide counsel for unaccompanied children and those who cannot afford counsel.

Holly Straut-Eppsteiner, Analyst in Immigration Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.