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Advancing Universal Representation: A Toolkit

Module 3: Implementing the Vision at the Local and State Level

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About this report

The Center for Popular Democracy (CPD), the National Immigration Law Center (NILC), and the Vera Institute of Justice (Vera) work together to expand the national movement for publicly funded universal representation. CPD and NILC provide strategic support to local and state advocacy campaigns. In 2017, Vera launched the Safety and Fairness for Everyone (SAFE) Initiative in partnership with a diverse group of local jurisdictions, all dedicated to providing publicly funded representation for people facing deportation. Through the SAFE Initiative, Vera provides strategic support to government partners, legal service providers, and advocates. Collectively, CPD, NILC, and Vera also coordinate at a national level, creating resources and space for advocates advancing universal representation to share, strategize, and learn from one another.

This is the final module of a three-part toolkit informed by CPD, NILC, and Vera's experiences advancing the universal representation movement. (Module 1 was published in December 2018 and Module 2 was published in May 2020.) These experiences have been guided by the expertise of advocates, organizers, legal service providers, and policymakers across the country who have led publicly funded deportation defense efforts. The toolkit is intended to equip the same stakeholders with strategies to make the case for implementing and sustaining universal representation programs. For more information, see the *Advancing Universal Representation* toolkit online at vera.org/advancing-universal-representation-toolkit.

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Introduction

This is the final module of a three-part toolkit aimed at supporting advocates, organizers, legal service providers (“providers”), and policy-makers seeking to advance local and state universal representation programs nationwide for immigrants facing deportation. Drawing from best practices and lessons learned from Vera’s experience managing local, state, and federal programs that together advance a blueprint for universal representation, this module focuses on implementing programs funded locally or at the state level. These programs are exceedingly important as we continue working toward a legally mandated and federally funded representation system for all immigrants facing deportation.

Universal representation—a public defender system for all immigrants facing deportation—is based on the fundamental belief that *everyone* deserves due process under the law. Along with advocates throughout the country, the Vera Institute of Justice (Vera), the Center for Popular Democracy (CPD), and the National Immigration Law Center (NILC) have advanced this vision

based on the premise that every person facing deportation should be entitled to legal representation regardless of income, race, national origin, or history of contact with the criminal legal system. Achieving this vision supports the broader movements to end immigration detention and mass incarceration and to center racial equity in our nation's legal systems.¹

Universal representation programs result in a model of representation different from what exists in many other indigent immigration legal services that were created with limited resources—and because of a system that undermines access to counsel. Under more common triage models, attorneys perform a preliminary review of potential clients' cases before selecting the ones they can represent based on criteria such as the perceived strength of the case or personal characteristics.² By contrast, under a universal model, attorneys offer representation without considering any factors other than household income and lack of representation.³ By eliminating selection criteria, universal representation avoids perpetuating narratives about “good” versus “bad” or “deserving” versus “undeserving” immigrants. Universal representation promotes racial equity by providing representation to all, including those who face deportation as a result of contact with the criminal legal system—itsself marred by a legacy of slavery and systemic racism—and who often get left behind by triage models.⁴ A shift away from selection criteria brings with it many important considerations for program design and implementation.

This module is for advocates, government staff, and providers—all of whom have significant roles to play in launching a successful program. While providers are responsible for representation, advocates can use the recommendations here to make sure the program is designed to focus on local needs, engage in referrals and supportive services for families of those who are detained, educate community members about the program, and ensure accountability.

To write this module, Vera staff built on the organization's experience managing and working with dozens of deportation defense programs nationwide, including those in the SAFE Initiative and the New York Immigrant Family Unity Project (NYIFUP). Although the focus of this module is on the local and state levels, the authors also drew on Vera's extensive experience managing national representation programs at the federal level where appropriate. Leaders from several of these programs have contributed their perspectives and expertise. The authors also learned

from Vera, CPD, and NILC's collective expertise on the front lines of the growing movement for universal representation.

Universal representation programs at a glance

Universal representation is predicated on the belief that everyone deserves to be treated with human dignity and respect, including being afforded the right to meaningfully participate in legal proceedings, particularly when their own liberty is at stake. Universal representation programs should emerge from the immigrant communities they serve and be designed with their ongoing engagement. As discussed in Module 2, successful action for universal representation is often rooted in community-based campaigns and diverse coalitions that center the voices and experiences of those who are directly impacted.⁵ Launching a program requires close coordination among government agencies, advocates, and providers, as well as mechanisms to stay accountable to directly impacted community members. Program design is a big part of bringing this vision to fruition. As many groups work to address the access-to-counsel crisis nationally through a range of related initiatives and strategies—such as representation for bond hearings or pro bono support programs—these key tenets and values are unique to full-scope universal representation:⁶

- › **Every person facing deportation is represented by an attorney.** Where resources are limited, representation for those in detention should be prioritized.
- › **There are no eligibility criteria other than income and a lack of private counsel.** Akin to a public defender system, no one is excluded on the basis of a prior criminal conviction, because they live outside of the funded jurisdiction, or because of the perceived merits of their case.
- › **Representation is zealous and person-centered.** Attorneys should aggressively hold the government to its burden in every instance and present the fullest defense ethically possible in every person's case. Representation comes without judgment, with empathy, and is part of a holistic legal defense.

- › **Representation begins as early as possible and continues throughout the life of the case.** Although the circumstances of each case may vary, representation should begin as soon as the client is detained or the charging document is filed. Attorneys represent clients until there is a final decision on the case: from bond hearing

Every person facing deportation should be entitled to legal representation regardless of income, race, national origin, or history of contact with the criminal legal system.

to challenging underlying criminal convictions or other collateral proceedings, when appropriate, through appeal. This continuity of representation ideally will exist even if the person is transferred to a different jurisdiction or voluntarily moves after release from custody.

- › **Public dollars fund representation.** Protecting the basic right of due process is the government’s duty. Investing public money is critical to sustaining and institutionalizing universal representation locally while building toward a national system of deportation defense.

Due to limitations of funding, the local political landscape, or the local legal services infrastructure, it may not always be feasible to meet all these criteria at the outset of a deportation defense program. But together these principles establish a “North Star” for fully funded and sustainable programs that serve all immigrants facing deportation—and set a course toward a federally recognized right to government-funded counsel in deportation proceedings for everyone.



Funding the program

Because there is no federal right to a government-funded attorney in immigration court, people targeted for detention and deportation must either hire a private attorney at their own expense or find an attorney to represent them for free. As a result of the incredible financial and logistical obstacles people face securing representation, most of those who fight for their lives in immigration court—including 70 percent of people in detention—navigate the complexities of immigration law alone.⁷

Since 2013, a growing number of cities, counties, and states have stepped up to address this due process crisis by creating and expanding publicly funded deportation defense programs, showing great leadership and sending an important message to communities about their values. Jurisdictions throughout the country have made great strides toward deportation defense. This includes state funding in California, Illinois, New Jersey, New York, Oregon, and Washington, as well as local funding in Ohio, Texas, and beyond.⁸

Municipalities and states should support immigrant communities by funding deportation defense programs

Vera conducted a national poll that found an overwhelming 67 percent of people in the United States support government-funded lawyers for those facing deportation.⁹ Need for these programs continues, even more so amid the COVID-19 pandemic and mass protests for racial justice, both of which have resulted in increased scrutiny of the ways local budgets are used and discussions about how to promote the health and safety of communities of color.

Even with the rapid growth of local and state programs, their geographic limitations leave many people without access to counsel and more vulnerable to deportation. Some locally funded programs serve only those who live in or are detained within the jurisdiction. Such “residency requirements” often exclude people who have newly arrived and/or are seeking asylum protections, including those detained before establishing a residence—even people from a neighboring town. Because no one should be deprived of representation simply by virtue of geographic boundaries, local and state governments should consider structuring their programs to be as expansive and inclusive as possible. A program can achieve this either by not imposing a narrow residency requirement—such as in New York City, New York State, and San Francisco, where the person must simply have their case heard at the immigration court physically located in the jurisdiction, regardless of where they lived before being detained—or by defining residency broadly.¹⁰ For example, some cities extend their legal services to people who live in their county and others seek to broaden the reach of the program by partnering with neighboring cities and counties to fund programs jointly in a regional collaboration. Others extend services to anyone who lives in, works in, or has a connection to the jurisdiction, including an intent to reside there. This approach is particularly important in areas that are gentrifying, where many immigrants cannot afford to live but still contribute significantly to the community’s well-being by working, shopping, and supporting their families there.¹¹

The federal nature of immigration enforcement requires a federally funded representation system

Through its various agencies, the federal government is responsible for arresting, detaining, and initiating deportation proceedings against immigrants, as well as adjudicating their deportation proceedings. So it is incumbent on the federal government to bear the expense of representation for immigrants to safeguard their basic due process rights, just as it does in the criminal public defender system.¹² The federal government does fund legal representation in certain limited circumstances.¹³ But the long-term vision of the universal representation movement is to establish legally mandated and federally funded representation for all immigrants facing deportation—a system in which everyone facing deportation receives zealous, person-centered legal representation.¹⁴ A federal system, one that integrates lessons learned from the public defender system for people accused in criminal cases, is necessary to truly ensure access to such representation.¹⁵ Local and state programs are important stepping-stones for making that vision a reality, by helping develop the necessary infrastructure for removal defense, demonstrating the impact of legal representation, and building power in communities for this national movement.

Publicly funded deportation defense programs vary in size and scope and can scale up incrementally over time

Some jurisdictions fund universal representation as part of a broader investment in immigration legal services. This approach recognizes the continuum of needs for services beyond removal defense, such as “Know Your Rights” presentations for community members, help with “affirmative applications” for people seeking immigration protections who are not in removal proceedings, and citizenship assistance. All of these services are important interventions to support and stabilize immigrant communities and may prevent people from facing detention and deportation in the first place. But where resources appear limited, jurisdictions should prioritize

universal representation as a crucial last line of defense while exploring opportunities to create new revenue streams for other programs that serve immigrants. This is especially important because of the urgency and dire consequences for people facing deportation—particularly those who have lost their liberty through detention.

Jurisdictions throughout the country are in different phases of their trajectory toward fully funded universal representation. Some nascent programs are small, with initial investments of no more than \$250,000, while other more established programs have grown dramatically over several years. For example, NYIFUP—which began in 2013 as a \$500,000 pilot funded by New York City—expanded locally in 2014 and statewide in 2017 with an investment from the state. The city’s \$16.6 million commitment and the state’s \$5.1 million commitment for fiscal year 2021 ensure that all immigrants detained and in removal proceedings in New York have access to high-quality public defenders, establishing the state as a leader in this national movement.¹⁶ Jurisdictions not able to provide full funding initially have the option to start smaller and develop their infrastructure before scaling up. Because the need for and impact of universal representation programs is well established, government officials and other stakeholders should consider first-year funding an initial investment in a sustainable long-term program.

Three types of publicly funded deportation defense programs are common:

- › In **single jurisdiction programs**, removal defense is funded by one city, county, or state.
- › In **collaborative government programs**, jurisdictions pool their funds into one program. For example, government officials in Dane County, Wisconsin—which funded a program’s first year—collaborated with leaders in Madison to secure the city’s investment in the program’s second year, increasing the number of people who benefit. Similarly, in Minnesota, Ramsey County and the city of Saint Paul created a jointly funded program for their residents in 2019.
- › In **public-private partnerships**, private donors or foundations supplement funding from one or more government entities.

The legislative and budgeting mechanisms used to pass funding for legal defense vary widely and depend on local options and protocols. Because there is no uniform way to enact these programs through local budgeting

measures, advocates and government officials should evaluate all available options.¹⁷ Funding is often authorized through resolutions and ordinances that require legislative approval in the initial year. For example, the San Antonio City Council passed an ordinance in 2017 authorizing an allocation from the general fund for immigration legal services.¹⁸ The city of Long Beach, California, passed the Long Beach Values Act in December 2018, establishing the Long Beach Justice Fund of \$250,000 to provide legal representation for low-income immigrants facing deportation. For jurisdictions implementing universal representation, these budget allocations can occur as part of the regular appropriations cycle, as a supplemental budget that reallocates unspent funds from an existing budget, or even as emergency

Using private funding to catalyze sustainable public investment: A proven model for success

Because safeguarding people’s rights is a public duty that should ultimately be funded by government, public-private partnerships can be developed strategically to advance the ultimate goal of a publicly funded and sustainable program. For example, Vera’s SAFE Initiative began with public-private partnerships: each jurisdiction received \$100,000 in “catalyst funds” during its first year to incentivize the government’s initial commitment of public dollars and work toward sustainability. To date, all jurisdictions that received the catalyst funding have renewed their funding in subsequent years, and more than two-thirds of those jurisdictions have increased their public commitments since the program’s first year.^a

Similarly, the Samuel S. Fels Fund used \$300,000 in private funding to incentivize the city of Philadelphia to maintain and expand its commitment to the Pennsylvania Immigrant Family Unity Project during its first three years, helping ensure growth and sustainability after the pilot year. According to Sarah Martinez-Helfman, president of the Fels Fund, “No one should stand alone when facing deportation. So the Fels Fund decided to take a stand in the most collaborative way we could—with matching dollars to encourage the City to increase its funding. Then COVID-19 hit, and the City erased its commitment. We relied on champions in City Council and the [city’s] Immigrant Affairs Office who advocated internally, while immigrant leaders, organizers, nonprofit attorneys, and Vera mounted

a brilliant advocacy and media campaign. At Fels, we joined their strategy sessions and followed their lead; we wrote letters, made calls, and held firm on the matching conditions. The win only came through a united strategy and a lot of trust.”^b

Other jurisdictions have used private funds to expand the scope of services a program provides. For example, the Baltimore Mayor’s Office of Immigrant Affairs (MIMA) worked closely with Open Society Institute – Baltimore to launch a [comprehensive public-private partnership](#) that funds multiple organizations to provide community education and engagement as well as representation services for immigrants who are not detained.^c MIMA helps coordinate the program, and the foundation encouraged the mayor to set aside public dollars for detained legal services, which began in 2018.

^a Vera Institute of Justice, *Rising to the Moment: Advancing the National Movement for Universal Representation over Three Years of the SAFE Initiative*. (New York: Vera Institute of Justice, 2020), 10, <https://perma.cc/8WC5-VBCP>.

^b Sarah Martinez-Helfman, president, Samuel S. Fels Fund, October 26, 2020, via e-mail.

^c Open Society Institute Baltimore (OSI), MIMA, and Vera Institute of Justice, *SAFE City Baltimore: An Immigrant Education & Defense Fund* (Baltimore: OSI and MIMA, 2018), <https://perma.cc/D45L-G889>.

funding measures.¹⁹ While state programs have traditionally been established through budget measures, advocates in Maryland, New York, and Illinois are beginning to seek expansion of local programs through right-to-counsel legislation at the state level.²⁰ See “Paying for representation: Costs and payment models” on page 11 for more detailed information.

✦ The long-term vision of the universal representation movement is to establish legally mandated and federally funded representation for all immigrants facing deportation. ✦

Launching a program requires close coordination among government agencies, advocates, and providers, as well as mechanisms to stay accountable to directly impacted community members. Once approved, these programs are housed within a wide range of government agencies whose mission and work supports the immigrant community, such as a mayor's office of immigrant affairs, an office for new Americans, a public health department, or a public defender's office. These programs are increasingly housed in jurisdictions' equity offices, in recognition that universal representation is a tool for advancing equity in their communities.²¹ According to Liz Cedillo-Pereira, chief of equity and inclusion for the city of Dallas, Texas, “The City of Dallas is committed to protecting the rights of all residents, including immigrants and refugees who are a vital part of its families and communities. . . . As part of our commitment to advance racial equity, the City of Dallas Welcoming Communities and Immigrant Affairs team has embedded deportation defense through investment of funds and formalizing partnerships.”²² Many cities and counties that do not otherwise have dedicated immigrant affairs offices have created immigration liaison positions to coordinate these types of programs and better respond to the needs of immigrant communities.

Creating a structured mechanism for community involvement in the new program—such as an advisory committee or task force—can promote communication, accountability to impacted communities, and coordinated implementation. For example, after its program’s first year, the city of Long Beach convened the Long Beach Justice Fund Oversight Committee, which includes representatives from the Long Beach Sanctuary Coalition, community members, government officials, and

Spotlight on Prince George’s County, Maryland

In December 2016, Prince George’s County Council Member Deni Taveras introduced a resolution celebrating community diversity and rejecting bias, discrimination, hate, and harassment.^a The council unanimously passed the resolution, which led to creation of the Immigrant Services and Language Access (ISLA) program. With initial funding of \$100,000, ISLA established a legal representation program for detained county residents facing deportation and sought to improve language access for government services. The county selected the Capital Area Immigrants’ Rights (CAIR) Coalition—a provider with a long history of representing adults in local detention facilities—and CASA de Maryland, an immigrant-led community-based organization headquartered in Prince George’s County, to implement the program.

During the program’s initial year, CAIR Coalition led county council briefings, presenting data and stories about clients that demonstrated both positive impacts on the community and continuing unmet needs. CAIR Coalition’s work was strengthened by collaborating with CASA, which offers wraparound services to community members under the program and supports people’s cases. Together, CAIR Coalition, CASA, and Council Member Taveras successfully advocated for the program to scale up in funding and reach. The county council has incrementally increased funding, approving a \$500,000 commitment for fiscal year 2021. The council has also stabilized the program by approving multiyear funding commitments. As Taveras noted, “The ISLA program has planted the seeds for a transformation of our government and county. With every year this program is in place, we keep adding to the ways in which we integrate, serve, and protect immigrants in our community.”^b

According to Kelly White, who leads CAIR Coalition’s work representing detained adults, the county council’s multiyear investment has had an impact in three significant ways:^c

- › It ensures continuity of zealous representation for cases that take more than one year to conclude, including people who have been released and those who may face prolonged detention beyond the initial contract year.
- › It strengthens the quality of representation by allowing CAIR Coalition to attract stronger candidates with a commitment of ongoing job security.
- › It attracts new investors by assuring them of ISLA’s stability and long-term sustainability. In June 2020, Immigrant Justice Corps (IJC) made a significant resource investment in the program. IJC is a fellowship program that mobilizes, trains and supports young attorneys and advocates and partners them with legal providers and community-based organizations. With the county funding of \$500,000 and IJC’s investment of \$900,000 in staffing, ISLA immigration attorneys now expect to represent every detained and unrepresented person in Prince George’s County.

^a See Prince George’s County Resolution CR-002-2017 at <https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?GUID=9D0D293C-897B-4127-B6ED-F558E67F1F13&ID=2901036>.

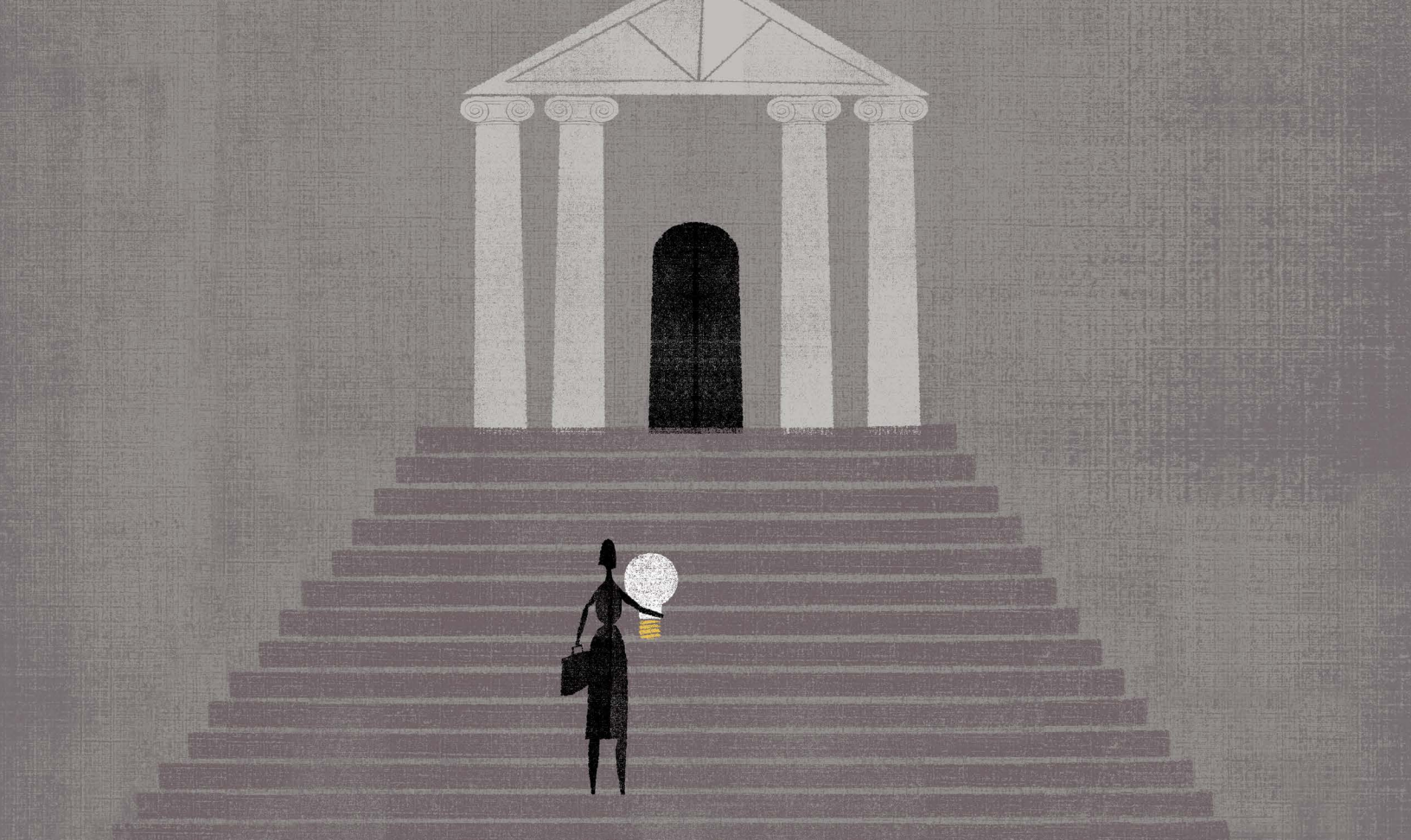
^b Deni Taveras, city council member, Prince George’s County, Maryland, September 3, 2020, via e-mail.

^c Kelly White, program director, Capital Area Immigrants’ Rights Coalition, August 12, 2020, via email.

providers. The committee is tasked with supporting the implementation of the program, creating any future requests for proposals (RFP) and selecting a provider, and promoting fundraising and sustainability.

Similarly, in Texas in February 2020, the Harris County Commissioners Court began the process of developing an immigrant legal services program by passing a resolution directing the Community Services Department to establish, administer funds for, and manage an immigrant legal services program. Community groups and advocates were critical in getting the resolution passed. Because of the trust built between community groups and government in the process of establishing a fund, local groups persuaded the department to create a task force of diverse stakeholders to write the RFP guidebook. In partnership with local advocates, the task force facilitated a series of listening sessions with directly impacted people, community-based organizations (CBOs), and providers serving immigrants to learn about service needs and gaps and how the program could best address them. After a deliberate and inclusive process of community engagement, the task force designed a program to reflect the input generated. The county approved the proposal and provided \$2 million in funding for the program's first year.²³ Ongoing collaboration and intentional communication among advocates, CBOs, providers, and elected and other government officials can help ensure that a program is responsive to and supports those who are most directly impacted.²⁴

As is discussed throughout this module, CBOs support and enhance program implementation in a variety of ways, and those efforts should be funded to ensure continued capacity to do so. In Long Beach, for example, the local advocacy group is funded for its extensive work coordinating program referrals and providing ongoing support to clients and their families. In Ramsey County, Minnesota, legislators passed funding for the Immigration Wrap-Around Services Program. The program funds local CBOs to provide culturally competent education to immigrant communities about their rights and the legal defense fund, provide supportive services to families impacted by detention and deportation, and facilitate referrals.



Selecting legal services providers

Once funding has been secured, government agencies must engage a provider partner or collaborative of providers—typically a nonprofit organization or a public defender’s office—to carry out the representation.²⁵ Although neither entity is necessarily better equipped to operate these programs than the other, the suitability of a partner will largely depend on the organization’s experience and strengths, as well as the landscape of legal providers in the jurisdiction.²⁶

A strong provider is crucial to the program’s success

Each jurisdiction has specific needs and requirements, but the following core principles should guide the provider selection process:

- › **Ideally, the provider should have a demonstrated track record of providing high-quality removal defense.** This type of experience, preferably with detained immigrants, is one of the most important criteria. Ideally, providers will have experience navigating the intersection of immigration and criminal law, as some people end up in detention because of prior contact with the criminal legal system.²⁷ In some jurisdictions—such as in New York City, where the Bronx Defenders, Brooklyn Defender Services, and later the Legal Aid Society were selected to implement NYIFUP—public defenders’ offices have been selected because of their experience in this area and their practice of providing zealous representation for all, regardless of people’s background or past criminal convictions. In other jurisdictions, immigration legal service providers may be better suited to implement a program because of their expertise in removal defense. In many other places, there may not be an organization with experience in removal defense; additional supports will be needed to start and sustain a program. See “Building defense from scratch” on page 19 for examples of how programs have successfully managed this.
- › **The provider should be deeply committed to the principle that everyone deserves a zealous defense.**²⁸ Universal representation programs present an opportunity to implement the values that most attorneys cherish. But as described in “The universal representation culture shift,” on page 40, providers that previously operated under a triage model may find they need to shift the culture of their practice. Applicants should articulate commitments to representation for all, holding the government to its burden, and creatively considering all defenses and avenues for relief for every client. Providers new to universal representation should also demonstrate a plan for integrating a merits-blind selection model into their operations.
- › **The provider should have strong roots in immigrant communities and/or be connected with community-based organizations that work closely with immigrants.** Building or maintaining trust with immigrant communities is critical to this work. Some providers are situated within CBOs, while others will need to be in continuous communication with CBOs throughout

the program so that they can collaborate on education about new services and facilitate referrals. Changes in enforcement, detention, and court policies may necessitate adjusting how the program is run; CBOs should have accurate up-to-date information about the program to ensure community trust and accountability.



Legal teams must have enough resources to provide zealous, person-centered representation throughout the life of a case.



- › **The number and type of providers selected should be commensurate with the level of investment and be reassessed as the program grows.** When a program starts with a small initial investment, it usually makes sense to concentrate those resources with one provider or a small number of providers, to help ensure that each one is able to hire and support a full practice team and maximize the benefits of doing so.²⁹ Funding too many organizations at the outset with a limited pool of money creates inefficiencies and can decrease the program's overall impact. Ideally, providers should be equipped to represent people in the wide range of claims that arise under a universal representation model, thus enabling them to begin representation immediately after meeting a prospective client. Program administrators may also involve providers that specialize in working with specific populations, such as survivors of gender-based violence or people who identify as LGBTQIA+. These organizations could receive referrals from the program's primary providers when specialized expertise would benefit clients. As the investment in the program grows over the years, jurisdictions should reassess the number and types of providers funded and how to increase their capacity to execute the program more robustly.

- › **The goal is to provide zealous, person-centered representation.**
Legal teams must have enough resources to provide zealous representation throughout the life of a case, and the number of people served should never be prioritized over the quality of service. Unreasonably high proposed metrics will not only negatively affect outcomes and the delivery of due process but can also undermine the program's future scalability by setting an unsustainable precedent for costs. Providers will likely have a sense of how many clients they can reasonably and ethically represent over the course of a year with the staffing the funding level supports, and lessons can be learned from other programs. As is discussed in "Paying for representation: Costs and payment models," on page 32, funders and providers should approach metrics with a spirit of flexibility and a commitment to open communication throughout the implementation period. This is necessary to account for all of the factors beyond a provider's control that may influence the number of clients ultimately served.

Local funding rules determine a program's process and timeline

Although some jurisdictions require a competitive RFP process for contracts or grants above a certain amount, others permit the government to contract directly with an external provider or public defender without a competitive application process. Whenever possible, processes should be streamlined to ensure that programs can begin making an impact as soon as they can. But an RFP process can help promote government transparency, serve as a stepping-stone for establishing a contract or grant between the funder and the provider, and present an opportunity to clarify priorities and expectations. The content of an RFP for a universal representation program is relatively consistent and should include these components:

- › a description of the competencies required to carry out a universal representation program;
- › a plan for staffing the program;

- › a general plan for a merits-blind intake system and selection of clients and how to provide them continuous, independent, and zealous representation;
- › quantifiable markers to assess whether the program is meeting the desired goals; and
- › a budget sheet and budget narrative that aligns with the staffing and program plan.

Like the advisory committees described previously, a provider selection committee can involve a range of relevant stakeholders who serve in a voting or advisory capacity, including government representatives, local experts (such as law school clinical faculty), and representatives from CBOs, as well as people directly impacted by the immigration system. This helps ensure that the program and its design reflect the community's desires and the fund's goals—and that the selected provider has roots in the immigrant community or a record of collaboration with local organizations. As mentioned previously, for example, the Long Beach Justice Fund Oversight Committee reserved several seats for community members and representatives of the local advocacy group who will also serve on the provider selection committee.

The number of providers in the jurisdiction and their desire and capacity to expand their work to include this model will dictate the response to the RFP. Because ICE detains people in remote locations, providers are often located far from the people they would represent, creating barriers to expansion. Urban areas may have many providers with expertise in removal defense, while there may be fewer experienced providers in smaller cities and rural or remote areas—or none at all. But successful programs have grown even in areas that previously had no removal defense capability. In some places, experienced providers from neighboring cities can expand their reach to serve new jurisdictions, opening satellite offices or building local capacity for removal defense. In other places, organizations will need to build a removal defense program from scratch to help realize the long-term goal of nationwide universal representation.

Building defense from scratch

Many parts of the country do not have existing legal programs with significant experience in or capacity to provide removal defense. Legal service providers launching new programs have sought creative solutions and opportunities for collaboration or mentorship.

After the 2016 elections, government officials in Dane County, Wisconsin, reached out to a collaborative of immigrant-serving organizations to ask how the county could best meet the needs of local immigrant communities. The collaborative identified a long-standing gap in legal services: no free program existed for people the federal government targeted for detention and deportation. In response, the county created the Dane County Immigration Assistance Fund and selected the Community Immigration Law Center (CILC) and Immigrant Justice Clinic (IJC) at the University of Wisconsin School of Law to provide representation through the new program. IJC brought on an interim director with detention experience, and CILC—which had previously conducted free legal clinics and consultations as an entirely volunteer-run organization—hired Aissa Olivarez, its first full-time deportation defense attorney. CILC grew over the next three years with continued county funding and new funding from the city of Madison, enabling the fund to hire two additional attorneys.^a

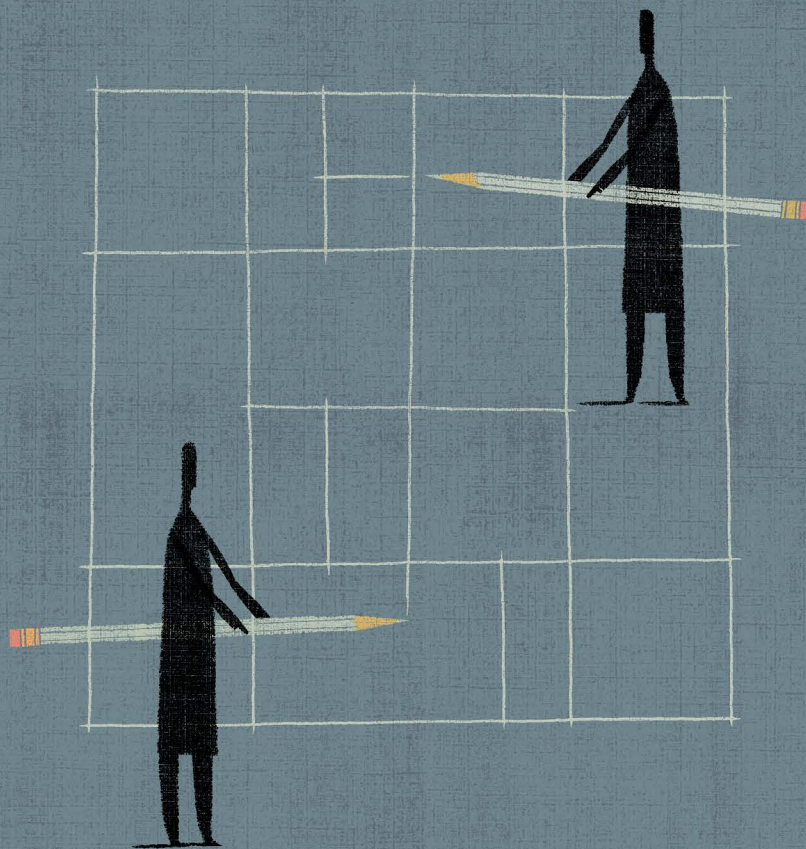
Olivarez shared several reflections intended to guide other legal teams that are starting new deportation defense programs.^b It was critical to quickly identify key stakeholders to help support the launch of a program and publicize the new services. Olivarez worked with the private immigration bar, whose members shared best practices and advice about the local detention center and immigration court. Her participation in the SAFE Initiative allowed her to learn more from similar programs around the country. She said it was also important to collaborate with the newly created Dane

County Immigrant Affairs Office, whose liaison, Fabiola Hamdan, helped Olivarez build trust with local immigrant communities. Hamdan also helped identify people ICE had detained and provided holistic wraparound services to clients and their families.

With growing activism propelling universal representation, providers throughout the country are establishing similar collaborations to support new programs. When the city of Atlanta launched an Immigrant Defense Unit within the Office of the Public Defender, for example, an advisory committee—consisting of representatives from the mayor’s office and private and nonprofit attorneys with significant experience at the local detention center—helped design the program and support the program’s sole attorney. And when the United Farm Workers (UFW) launched a program in California’s Central Valley, the group partnered with Centro Legal de la Raza, an Oakland-based provider with substantial removal defense experience, to house, train, and mentor the new staff attorney. After the initial training period, the UFW attorney relocated but continued to receive remote mentorship and supervision from Centro Legal. Although it is best to have experience and supervision in-house, these types of arrangements can help bolster new programs until funding capacity allows for more comprehensive staffing.

^a To read more about the launch of the center, see Lisa Speckhard Pasque, “Dane County Receives Grant to Defend Immigrants in Danger of Deportation,” *Capital Times*, September 19, 2017, <https://perma.cc/J4GN-DRE7>; for more on the center’s expansion, see Lisa Speckhard Pasque, “Madison Immigration Law Center Seeing Positive Results, Expanding,” *Capital Times*, June 12, 2019, <https://perma.cc/PA7P-FV28>.

^b Aissa Olivarez, managing attorney, Community Immigration Law Center, August 28, 2020, via e-mail.



Designing an effective and scalable program

deally, programs would be able to represent everyone in need, but smaller programs must have some strategic parameters to balance the reality of limited resources with a commitment to the principles of universal representation. SAFE launched in 2017, with a goal of replicating the practices that had proved successful in NYIFUP in local jurisdictions around the country. Those practices—which are reflected in this section and are consistent with practices that Vera’s federal representation programs use—prioritize zealous full-scope representation at the program’s inception, with an eye toward growing to scale. SAFE promotes these practices while also recognizing that programs may need to adapt them to meet local context and respond to community needs, particularly when the programs are not fully funded. Some of these adaptations are suggested later in this module. Although these guidelines

may be particularly useful for providers in developing and implementing programs, they can also help government officials and advocates consider and advise on program design.

Develop “merits-blind” systems to identify prospective clients

When funding levels limit the capacity of providers, programs implementing the universal representation model must identify how many people they can represent and then determine how to offer representation to potential clients without considering the merits of their legal cases. This typically includes offering representation on a first-come, first-served basis or through some form of randomized selection.³⁰

Merits-blind intake systems reduce bias in the distribution of legal services and help ensure that everyone has equal access to the opportunity to be represented, including those who have had prior contact with the criminal legal system and people who ultimately do not pursue a defense to removal. This type of intake system ensures that people who have viable defenses or claims to relief are not excluded from representation based on an initial consultation; a comprehensive analysis of someone’s options is not always possible until the client develops sufficient trust in their attorney to disclose all relevant facts. Merits-blind intake also lays the groundwork for a truly universal public defender system by exposing providers to a broader cross-section of people who need defense and the wide variety of claims they present, thus enhancing providers’ expertise and allowing them to scale up more easily when funding increases.

Programs have different approaches to where and when they encounter potential clients. Some, like NYIFUP, begin by meeting their clients at a court docket. The Varick Street Immigration Court staff gave providers the names of people who were appearing for their first court hearings without attorneys and initially set aside space within the court where they could consult with potential clients and offer them representation. During its pilot year, NYIFUP staff covered the dockets once a week: anyone on the docket that day who was income-eligible and unrepresented was offered representation. The program stopped taking new clients once staff had reached the agreed-upon caseload. Now that NYIFUP has grown to scale,

its attorneys maintain a daily presence at the court to identify unrepresented people; later, they screen potential clients and offer representation to all eligible people at the detention center.³¹

✦ Significant barriers to accessing legal counsel remain for people in detention centers who are unrepresented, despite national detention standards and ongoing litigation to enforce them. ✦

Because NYIFUP is a court docket-based program, it primarily serves people in detention who are in deportation proceedings before an immigration judge.³² Administrators might also expand the scope of their programs to represent people who do *not* have an automatic right to see an immigration judge and therefore face fast-tracked deportation because of their immigration or criminal court history.³³ The state of New York did just that: the upstate NYIFUP, which initially focused on those who are detained and have an automatic right to see an immigration judge, now includes some state funding for people who are subject to fast-tracked deportation. New York City and the state have also increased their investments in legal representation for people without this right through two additional rapid-response initiatives.³⁴

Many SAFE programs meet their clients at local detention centers through a combination of “Know Your Rights” orientations, Legal Orientation Programs that make pro bono referrals, detention hotlines, and referrals from other organizations.³⁵ This approach has proved necessary because securing collaboration from the courts and detention staff to connect unrepresented people with legal programs can be a challenge. Significant barriers to accessing legal counsel remain for people in detention centers who are unrepresented, despite national detention standards and ongoing litigation to enforce them.³⁶ By creating inroads into the detention

center, legal programs can reduce those barriers, make people aware of the program, and enable them to meet providers soon after they are detained. Rapid response networks serve as an important referral source for people with or without an automatic right to see an immigration judge, in order to identify and serve them as quickly after detention as possible. Many SAFE programs have been particularly interested in including people subject to fast-track deportation because the Trump administration targeted longtime community members with prior deportation orders.

Design intake systems collaboratively

Providers are typically the primary coordinators of intake systems, given that they usually have access to detention centers and detention hotlines. But intake systems can be even stronger when they are collaboratively designed and implemented with CBOs. Trusted organizations—often the first to be notified by a loved one if someone is arrested and detained—can help connect people in need of services with the local program, serving as a crucial source of referrals. But without full funding, providers will have

Engaging federal agencies to launch a program

When possible, providers can engage with federal agencies such as the Executive Office for Immigration Review (EOIR) and U.S. Immigration and Customs Enforcement (ICE), educate them about the launch of a program, and secure their collaboration. The willingness of EOIR and ICE personnel to engage varies greatly by jurisdiction and may be dictated by national guidance, but their participation can provide useful benefits, such as improving a provider's ability to identify eligible clients as early as possible and obtaining documents important for zealous representation.

Programs can work with EOIR to secure interview space for attorney-client meetings, to obtain the court docket before hearings, and to identify unrepresented people for intake. Similarly, programs can work with ICE or a detention facility to get approval to hang posters or flyers notifying people of the program and explaining how to access services. Per

national detention standards, providers may also work with ICE to provide group presentations in a detention center.⁹ Finally, programs can engage the Office of Chief Counsel—the attorneys representing the government in deportation proceedings—to secure a commitment to providing important documents related to clients' cases (such as the initial charging documents) prior to the first master calendar hearing. This allows an attorney to review the record more fully and better advise clients of their options before the first hearing, resulting in a more meaningful hearing and the ability to advance a person's case more quickly.

⁹ U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), *National Detention Standards for Non-Dedicated Facilities (Revised 2019)* (Washington, DC: ICE, 2019), 191-193, <https://perma.cc/9ZYL-H428>.

limited capacity to meet the demand for all community referrals; doing so requires clear and continued communication between providers and CBOs so that those organizations can set realistic expectations for the people they serve. Collaboration with those who helped advocate for the programs in the first place also helps ensure that providers are accountable to the people they were funded to serve.

In Chicago, for example, the Legal Protection Fund allocates money to providers to represent people in detention and allocates training resources to CBOs to train local leaders as “community navigators.” Under the Community Navigator Training Program, pioneered by the Resurrection Project and the National Partnership for New Americans, immigrant community members who are not attorneys receive specialized training to provide immigration services (including “Know Your Rights” presentations and assistance completing applications) and conduct outreach.³⁷ Because community navigators are rooted in affected communities, they are often trusted and the first ones to know when someone is detained. They can quickly make a referral to the National Immigrant Justice Center, a provider in Chicago that has expertise representing residents in detention.

Begin representation as soon as possible and continue representation through the life of the case

People who remain detained by authorities typically move quickly through the immigration system; nationwide, their median case completion time was 46 days in 2019.³⁸ If attorneys do not intervene quickly, people’s cases could end without them ever having had access to representation and an opportunity to meaningfully fight deportation. Programs should be designed to facilitate full-scope representation as soon as possible after the person is detained or the charging document is filed. Providing representation early on allows attorneys to provide critical information and empowers people to make informed decisions about pursuing release from detention, fighting their case, and/or returning to their country of origin. Programs should also provide representation of people they encounter at later stages of their proceedings, as long as the attorney has sufficient time to adequately prepare for trial.

Establishing representation early and maintaining that relationship through the life of the case provides continuity and fosters trust with the client. It can often take several meetings before clients reveal information crucial to their defense because the underlying issues may involve events that are deeply personal, traumatic, or both. As described in this

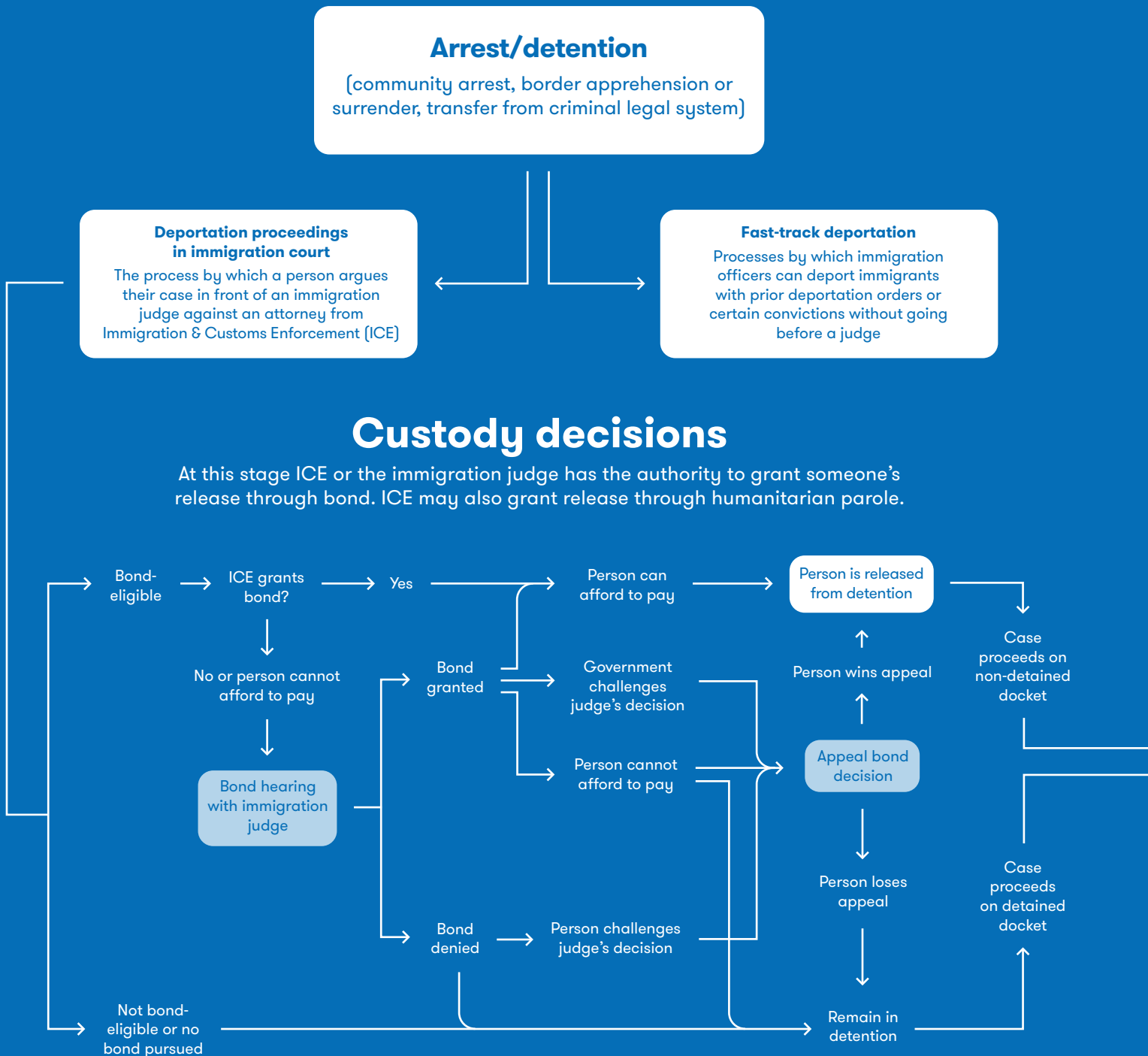
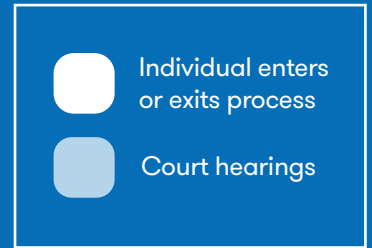
✦ Collaboration with those who helped advocate for the programs helps ensure that providers are accountable to the people they were funded to serve. ✦

module, a client's case may require multiple legal interventions and extend into appeals. People are best served when there is continuity of the legal representation; a program should support that continuity and provide representation after clients are released from detention on bond.

Close collaboration between attorneys and trusted CBOs can also help foster trust and enhance representation and client support in the aftermath of detention and throughout the case. For example, CBOs can help families locate loved ones in detention and explain how to contact, visit, or send money to them. They can also provide referrals for the nonlegal needs families may have as a result of detention or even meet immediate needs with in-kind donations. These organizations can work with legal teams to help gather evidence in support of a client's case—such as letters of support to demonstrate community ties—or by organizing a strong presence at a bond or removal hearing or even raising funds to pay for bond.³⁹ In addition, CBOs, in conjunction with the detained community member, their loved ones, and the attorney, may also decide to launch a public campaign to try to prevent someone's deportation or demand their release from detention. (See “The flow of immigration court cases” on page 26.)

The flow of immigration court cases

Deportation proceedings in immigration court are complex and require zealous representation so that people can navigate them successfully. Programs should be designed and funded to provide representation in custody decisions, merits hearings and appeals, and collateral proceedings. Representation should begin as early as possible and continue throughout the life of the case. [View or download this flowchart.](#)



Collateral proceedings

Immigration court is one of several settings where decisions are made about a person's case. Many people will pursue "collateral proceedings" outside of immigration court to resolve legal issues that may affect their case by allowing for bond eligibility, establishing grounds for termination, or qualifying for relief. These proceedings may occur concurrently with deportation proceedings.

State court

(for example, post-conviction relief to challenge the conviction underlying the government's case)

Federal court

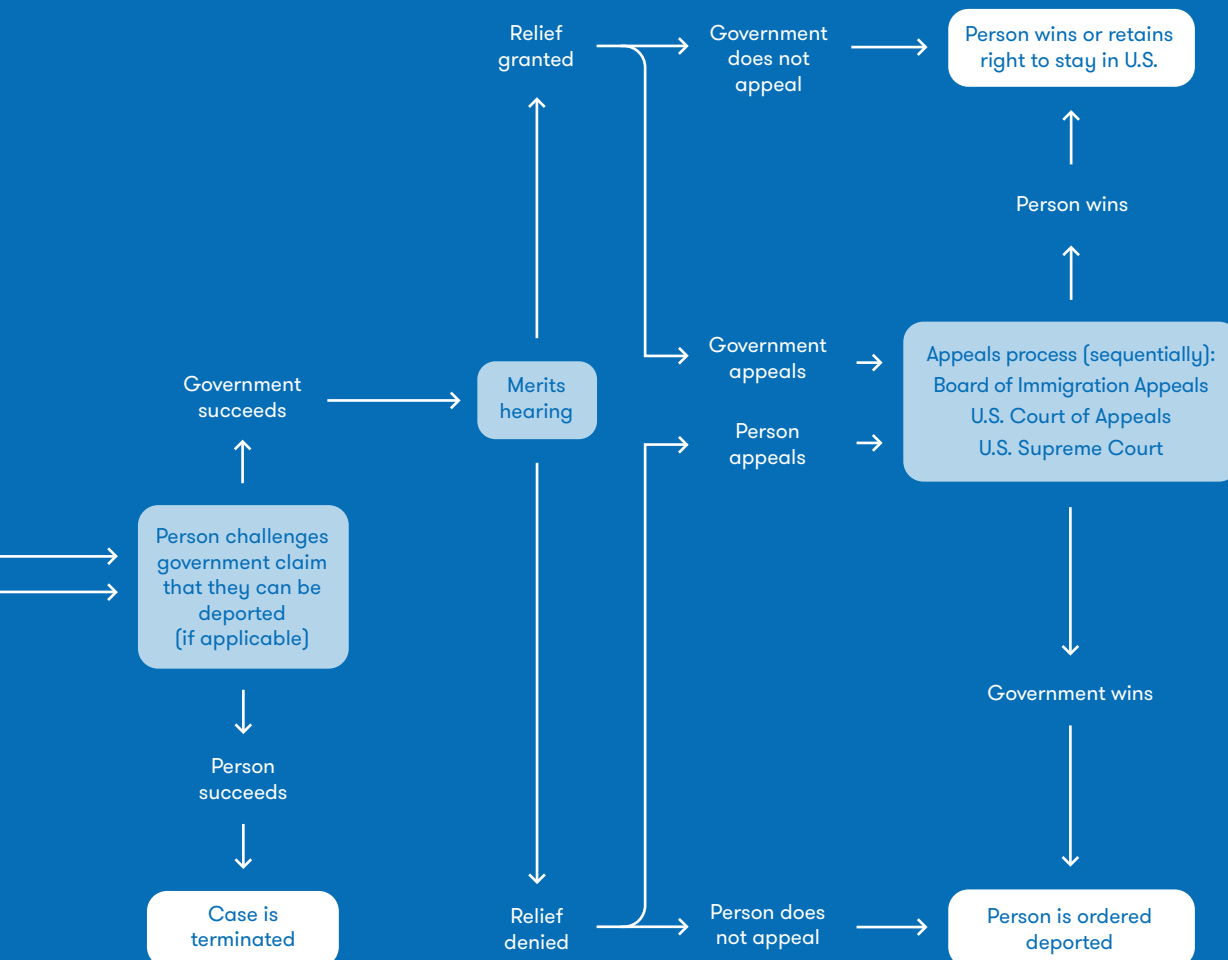
(for example, habeas proceedings to argue that detention is unlawful, federal post-conviction relief)

U.S. Citizenship and Immigration Services

(for example, applications for certain forms of relief)

Merits hearing and appeals

This stage is akin to a trial hearing, when a person presents a claim that they qualify under the law to remain in the United States and a judge considers the details of the case.




Commit to funding collateral proceedings before state and federal courts and across immigration agencies


Defending someone against removal is extremely complex and can require an attorney to present multiple claims—sometimes in multiple courts—to terminate a person's proceedings or meet the high burden of proof needed to win relief in immigration court.⁴⁰ Representation through forums outside of immigration court (“collateral proceedings”) should be funded in order to realize the vision of every person receiving a zealous defense:⁴¹

- › *Representation in other forums required to apply for relief from removal:* An important part of removal defense is applying for relief from removal, which sometimes requires representation before the U.S. Citizenship and Immigration Service (USCIS), a branch of the U.S. Department of Homeland Security separate from the court system. In some cases, young people must obtain a judicial order from a family or state court to qualify for Special Immigrant Juvenile Status, a form of relief USCIS grants to young people who have been abused, abandoned, or neglected.⁴²
- › *Habeas corpus litigation:* Habeas corpus litigation—federal litigation that can secure someone's freedom when they are detained in violation of their constitutional rights—is a critical legal tool for detained removal defense. This type of litigation provides an important check on the immigration detention system. It has been essential in gaining release for people during the COVID-19 pandemic, when detention conditions have become unconscionably dangerous. It has also been effective in challenging unfair laws that perpetuate an ever-growing immigration detention system, such as mandatory detention, a statutory scheme that subjects people to detention for months and years without an opportunity for a judge to review their custody. Such litigation can have a broad impact, providing avenues for release from detention for many people beyond an individual bringing a claim.
- › *Post-conviction relief:* Two federal laws enacted in 1996 significantly increased the criminalization of immigrants and expanded the

intersection of the criminal legal system and the detention and deportation system.⁴³ As a result, many immigrants today face the threat of deportation because of a criminal conviction—a disproportionately harsher consequence than what is exacted in criminal court for the same conduct. In some cases, this type of conviction can also prevent people from gaining lawful immigration



Post-conviction relief is an important way to address the criminal legal system’s harms that disproportionately impact communities of color.



status for which they would otherwise be eligible, subject them to mandatory detention, and permanently bar them from returning to the United States.⁴⁴ These laws and related policies have inflicted harm on hundreds of thousands of people and caused the world’s largest civil detention system to balloon even further.⁴⁵

Overturning a conviction in criminal court or modifying a conviction or sentence through a process known as “post-conviction relief” can help remove these obstacles and lead to positive outcomes in a person’s immigration case. This work is especially important given that people sometimes plead guilty to a crime without understanding the immigration consequences of the conviction, in violation of their constitutional rights.⁴⁶ Immigration attorneys can work with local public defenders, criminal defense attorneys, or even district attorneys’ offices to aid in this area of practice. Some providers, such as the Immigrant Defenders Law Center in Southern California, have staff attorneys who specialize in post-conviction relief.⁴⁷

Post-conviction relief is an important way to address the criminal legal system's harms that disproportionately impact communities of color. Because Black people are more often subjected to policing, arrest, conviction, and harsh sentences, Black immigrants are also more likely than people of other races and ethnicities to be subjected to deportation on the basis of criminal history.⁴⁸ Post-conviction relief presents the opportunity to challenge convictions and sentences and mitigate the expansive immigration consequences people suffer as a result of discrimination in the criminal legal system. This process can disrupt what might otherwise be an unchallenged arrest-to-deportation pipeline.

Appellate representation advances favorable case law and provides a critical check on the immigration court system

An immigration judge's decision is not always the final step in the process. Both the government and an immigrant may appeal a decision to the

Language access: Ensuring the equitable provision of legal services

Universal representation programs should make sure that people are not denied a fair day in court simply because of the language they speak or their national origin. People who speak languages other than English or Spanish face additional obstacles to accessing counsel because many providers do not have the language capacity to serve them, thus reinforcing the systemic discrimination these programs are built to dismantle. For example, Black immigrants and people from indigenous communities face significant language barriers in the immigration system.^a Legal teams must be able to overcome those barriers and provide culturally competent, person-centered representation to all immigrants.

Programs should hire bilingual staff and have a plan and sufficient resources to enlist interpreters for clients who

speak languages beyond the staff's capacity. Attorneys and CBOs can collaborate to leverage local language skills and improve a program's language capacity. Programs should reflect the diversity of the communities they serve, and providers should regularly consider ways in which limited language access may be creating obstacles to the equitable provision of legal services.

^a See Nancy Adossi, Tadios Belay, Carl Lipscombe, et al., *Black Lives at the Border* (Brooklyn, NY: Black Alliance for Just Immigration, 2018), 13, <https://perma.cc/8FLK-SEA2>; and Tom Jawetz and Scott Shuchart, *Language Access Has Life-or-Death Consequences for Migrants* (Washington, DC: Center for American Progress, 2019), <https://perma.cc/N7GB-WH4P>.

Board of Immigration Appeals (BIA), although someone fighting their case while detained is usually required to remain in detention throughout the lengthy appeals process. It is nearly impossible to know whether someone has adequate grounds to file an appeal—or to win an appeal—without representation. In many courts, government attorneys automatically appeal every decision that favors the person fighting deportation. Such tactics demonstrate the power and imbalance of a system that always has representation for the government but not for the noncitizen; due process is easily undermined without parity in legal services for people facing deportation. In light of this, representation programs should factor in resources to continue representation through BIA appeal when the client has a viable claim they would like to pursue.

After a BIA decision, either party can appeal to the U.S. Court of Appeals (the federal appellate court). Because immigration judges and the BIA are part of the executive branch's Department of Justice, an appeal to the Court of Appeals presents the first opportunity for a court within the judicial branch to review the case. Appeals can lead to positive new case law that can benefit large numbers of people and provide an important check on the immigration court system, one that—because it is housed within the U.S. Department of Justice—is increasingly politically polarized, raising concerns about bias and abuse of discretion.⁴⁹ Ideally, a universal representation program can offer representation at this stage. Because of limited capacity and how practices in federal appellate courts differ significantly from those in administrative immigration courts, it may not be possible to develop in-house expertise to provide federal appellate representation when a program launches. If that is true, programs might consider partnering with law school clinics and law firms engaged in pro bono work to place these appeals with free, high-quality legal counsel.

Those who work with universal representation programs are also well positioned to notice patterns and gather information that may lead to or support other efforts to defend people in detention or limit the expansion of detention. This may happen through class-action litigation, congressional briefings, media awareness, and other campaigns. Providing staff opportunities to connect their individual legal representation to advocacy for systems change can also improve staff morale and feelings of efficacy.



Paying for representation: Costs and payment models

An initial investment can help funders assess needs and costs and inform the future growth of an institutionalized program. Because the need for and impact of universal representation programs is well established, government officials and other stakeholders should consider the first-year funding an initial investment in a long-term sustainable program. As programs grow, they can achieve greater efficiencies of scale.⁵⁰ Many programs start with modest initial investments commensurate with the local jurisdiction's size and budget. For example, in some smaller cities and counties, programs have started with an initial investment of \$200,000 to \$500,000. In larger jurisdictions like Chicago and Los Angeles, the investment started at \$1.3 million and \$7.9 million, respectively (the latter through a two-year partnership among the city, county, and philanthropy).⁵¹ Unfortunately, even these relatively large initial investments have not been

enough to meet the demand. Initial investments should be planned to increase incrementally over time to support a fully funded infrastructure for representing everyone in the jurisdiction who is in need. This would allow



Government officials and other stakeholders should consider the first-year funding an initial investment in a long-term sustainable program.



legal teams to build out capacity at a manageable pace. For example, the program in Prince George’s County started as a \$100,000 investment that grew to \$500,000 after a few years. (See “Spotlight on Prince George’s County, Maryland” on page 12.) The state of New Jersey doubled its investment for fiscal year 2021, from \$3.1 million to \$6.2 million.⁵²

The ideal model of funding is secure over a multiyear period with room to grow incrementally

Most current deportation defense programs need to get annual approval through the local operating budget process, a requirement that creates funding uncertainty and obstacles to staffing a robust removal defense program. First, many deportation cases will likely still be pending beyond the first year.⁵³ Where it is feasible, multiyear funding helps ensure continuity of representation throughout clients’ cases, so that the budget process doesn’t cause gaps in the provision of legal services. Second, providers face challenges in hiring and staffing when funding is not secure beyond the first year, impeding the overall impact of the program and negating

some of the initial infrastructure investment. Multiyear funding allows organizations to hire a team, build caseloads over time, and recruit from a broader pool of talent than they may have otherwise attracted with an uncertain funding stream. Jurisdictions such as Prince George’s County have been able to address these challenges by creating a multiyear program. Others—including Dane County, Denver, and Long Beach—have made their investment a permanent line item in their local budget, freeing the programs from an annual negotiation and approval process.

Funding levels should reflect a commitment to supporting the infrastructure needed to create and adequately staff legal teams

Although program costs vary depending on size, location, scope, and stage, government agencies should anticipate funding some essential budget items, including these:

- › **legal teams**, including attorneys, paralegals, administrative support, social workers, case managers, and supervisor/management support (see “Staffing and managing legal teams” on page 34 for more details);
- › **infrastructure expenses**, such as leasing additional space, ongoing overhead costs (like phone and internet), and a case management system;
- › **staff training and support**, such as legal training, professional development, bar dues, and access to legal research resources;
- › **travel expenses**, such as mileage reimbursements or car rentals (detention facilities and courts are often located far from metropolitan areas where providers are usually located); and
- › **litigation expenses**, such as expert witnesses, interpretation, filing fees, and incidental expenses.⁵⁴

Investments should also reflect a commitment to funding full-scope representation that continues through the life of the case. See “Designing

an effective and scalable program” on page 20 for more information on program design.

Once the amount of funding is determined, jurisdictions should implement a payment model that supports legal teams and promotes the values key to universal representation. The development of a sustainable universal representation program that centers zealous, independent, and

✦ Investments should reflect a commitment to funding full-scope representation that continues through the life of the case. ✦

person-centered defense while making efficient use of limited resources depends in large part on how the work is funded. Establishing a billing and payment system that ensures enough resources and makes the best use of roles for all relevant actors allows programs to serve all stakeholders.

Many factors influence the preferred way to pay for a program, including its scope, caseload volumes, the distance from detention centers, and government contracting requirements. Publicly funded programs have used different billing models to balance these factors, including hourly billing, flat-rate budgeting, fixed cost per case, and unit pricing. For a more detailed description and comparison of the four models, see the appendix “Billing and budget models” on page 58. As described in more detail below, **Vera advocates using a flat-rate budget model for universal representation programs** because it promotes the best practices listed here, particularly when compared with unreliable cost-per-case budgeting models. Billing and payment systems should do these things:

- › **Reflect and reinforce the optimal roles for all stakeholders, allowing the government funder and providers to focus on**

what they do best. For the government, this means ensuring the delivery of funded program services at a reasonable, predictable cost while avoiding involvement in case-level decision-making. For providers, this means delivering zealous independent representation, which requires adequate resources and the ability to hire, train, and retain staff. A neutral third-party administrator—a role that local foundations and Vera have played in certain programs—can help reinforce those roles by administering the billing and payment system and ensuring that resources are allocated appropriately.

- › **Account for representation over the life of immigration proceedings.** Detained cases typically move quickly through the immigration system. But with an immigration court backlog exceeding 1.2 million pending cases, deportation proceedings can take several years to complete, particularly for clients who are fighting their cases outside of custody, including those previously detained and released on bond.⁵⁵ Multiyear funding allows legal teams to carry caseloads that account for individual cases each year they remain open; this helps ensure continuity of representation throughout a client's case and helps providers maximize their ability to plan and balance a diverse set of caseloads over time.⁵⁶ It also promotes staff retention, which supports continuity of representation for cases that last for long periods and strengthens the relationship and trust built between the client and attorney.
- › **Promote budget predictability and cost control.** The billing and payment system should enable the provider to estimate how many people will receive program services and how much the program will cost during the funded period. It should also give providers an idea of their caseloads and the scope of funded representation, staff, and other resources required to serve that caseload, as well as the amount the provider will be paid over the funding period. The billing and payment model should ensure that providers have enough resources to represent clients across a broad spectrum of case types and complexities.⁵⁷
- › **Be sustainable for all stakeholders.** The billing and payment model should aim to support zealous representation in a way that is sustainable over time. This includes funding for the

Organizational case metrics can center values and ensure progress toward program goals

Establishing case metrics, though complicated, is important to set expectations, prepare to scale up a program, and ensure that work is proceeding in line with commitments. Metrics—such as an estimate of the number of clients expected to be served—should be established from a program’s onset and be informed by a reasonable assessment of what can be achieved within the set time frames and with available funding. Unreasonably high metrics will undermine the zealotness of representation and the program’s future scalability by setting an unsustainable precedent for costs.^a Metrics should be based on the number of clients for whom representation is initiated, rather than cases completed or outcomes, which are outside of even the best attorney’s control. Clients whose cases extend beyond the funding period should be factored into agreed-upon metrics for the future—that is, metrics for subsequent years should include the expected number of carryover clients as well as of new clients the program hopes to represent. Experienced providers have identified this as a key best practice for promoting program sustainability.

Providers and funders should agree on caseload metrics with a spirit of flexibility and a commitment to ongoing open communication to account for the many factors outside of the provider’s control that may influence the numbers of clients ultimately served. When federal immigration policy and legal precedent change, they affect the people who are detained and the resources needed to represent them. The same is true of national crises; the COVID-19 pandemic has had a devastating effect on immigrants in detention, for example. The stakes for those in detention have become higher than ever, as have the obstacles attorneys have faced to identify, access, and represent them.^b ICE’s temporary decrease in interior enforcement has meant that in some locations, fewer people have needed representation. Nevertheless, representing a relatively smaller number of people has required significantly more resources as legal teams have scrambled to provide remote representation and pursue federal litigation to get their clients out of detention. Metrics have had to be revised to account for this unanticipated development. By contrast, other programs have had additional capacity but were unable to serve people who desperately needed representation because

they fell outside the program’s original scope. In some places, providers and funders have agreed to expand the scope of services and serve as many people as possible with that additional capacity. Ongoing communication and coordination among providers and funders have enabled providers to shift tactics and further the program’s goals by zealously representing immigrants even during a life-threatening public health crisis.

Beyond establishing case metrics, government funders should think broadly about using data to measure a program’s overall impact. Consider tracking data that focuses on the overall objectives that governments seek to advance through these programs, such as protecting immigrant communities, improving constituents’ well-being, and promoting racial equity. Data demonstrating the program’s immediate practical implications—such as impacts on legal outcomes, time spent in detention, and release rates—can be paired with stories from clients and other directly affected people to contextualize the rest of the data and describe impacts that statistics alone cannot convey. Although program data generated early on should be considered preliminary because immigration cases can take time to complete, it can nonetheless be illustrative of program impact. Some programs may also consider collecting data to demonstrate how the existing level of funding is insufficient to serve all of those who are in need, such as tracking basic information about how many people a program must turn away from representation after capacity has been met.

^a American Bar Association, *Ten Principles of a Public Defense Delivery System* (Chicago: American Bar Association, 2002), 2, <https://perma.cc/EQA8-2EUJ>.

^b American Bar Association, *Access to Counsel in Immigration Detention in the Time of COVID-19* (Chicago: American Bar Association, 2020), <https://perma.cc/4SXS-XPGZ>.

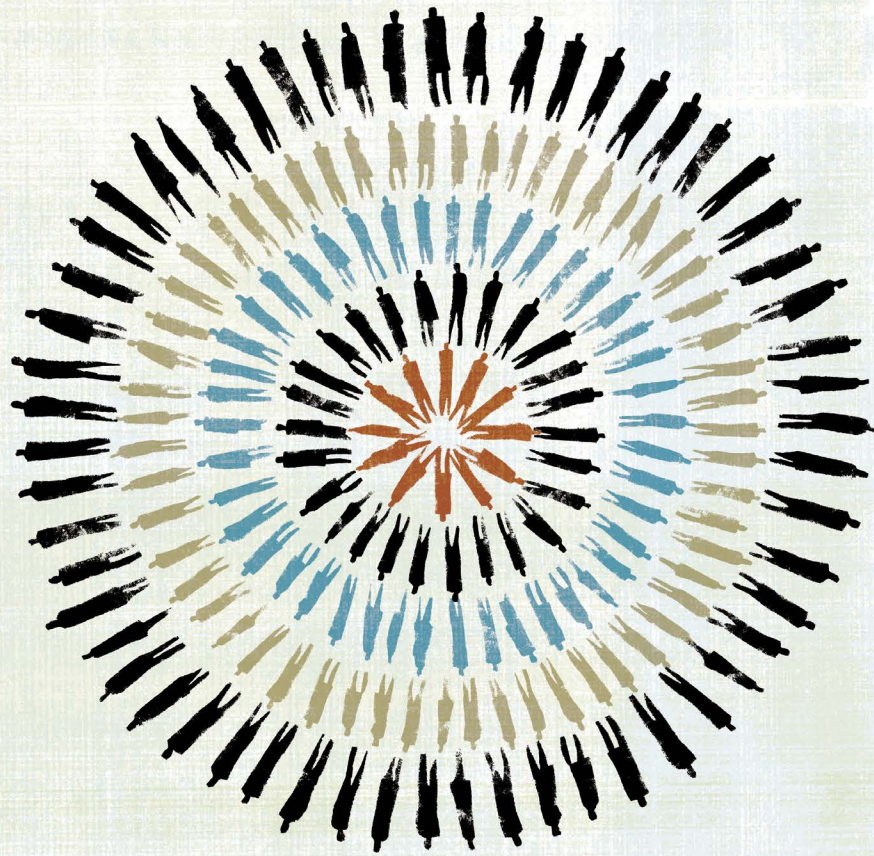
structural costs of starting, growing, and maintaining a universal representation program, as well as the resources for periodic evaluations of the program's implementation and impact. Stakeholders should also consider the administrative burdens of different billing and payment models, some of which require more work than others on the part of the government agencies, providers, and third-party administrators.

✦ **The flat-rate budget model is optimal for universal representation programs because it promotes best practices, particularly when compared with unreliable cost-per-case budgeting models.** ✦

- › **Be flexible.** Given the constantly shifting landscape of immigration representation, universal representation billing and payment systems should be flexible enough to accommodate changes in case volume, cost, and duration. At the beginning of a program or funding period, governments and providers should try to anticipate any factors that might affect program costs during that period and account for them in the budget. Those factors might be local (such as the opening of a large new detention facility several hours from the nearest provider) or national (such as a U.S. Supreme Court decision that changes asylum law). Although these factors can be difficult to translate into a budget, government administrators and providers should understand that the cost of representation may change during the funding period due to factors beyond their control and that they should communicate with one another to make adjustments to metrics or budgets going forward as such situations arise.

The flat-rate budget model is optimal for universal representation programs because it promotes these best practices, particularly when compared with unreliable cost-per-case budgeting models. This recommendation is based on best practices developed through experience with multiple funding models used in large-scale, publicly funded representation programs, including the federally funded National Qualified Representative Program and Unaccompanied Children's Program, and the city- and state-funded New York Immigrant Family Unity Projects (NYIFUP).

With a flat-rate budget, providers agree to provide representation for a defined caseload at a predetermined rate, paid in regular installments over the course of the funding period. The defined caseload includes cases that are still pending from the previous year. Proposed flat-rate budgets should include staff time and relevant non-personnel expenses, such as office rent, phones, and routine travel. This approach ensures enough capacity while providing a predictable income to the provider and a predictable cost for the government funder. Flat-rate budgets allow providers to hire and train enough staff to cover the contracted caseload while avoiding the high administrative burden of compiling and reviewing detailed hourly invoices—and relieve the government agency of the additional administrative burden of reviewing and approving detailed hourly invoices. Programs may also consider using a hybrid model that uses multiple payment systems, particularly when multiple providers are involved. For example, a program might compensate some providers using flat-rate budgets and others using hourly billing.



The universal representation culture shift

Due to limited capacity and a legal system that undermines access to representation, many immigration attorneys have historically engaged in some level of “triage,” performing a preliminary review of cases before selecting clients they can represent. Universal representation programs that employ a merits-blind intake system diverge from this approach.

Universal representation requires a “public defender” mindset

Establishing these new models often requires a culture shift for providers, as well as for CBOs that also may engage in a form of triage or prioritization when referring people to legal programs. For providers, it

is imperative to create and sustain a practice team and work culture that centers the values that everyone deserves due process and deserves to be treated with dignity, regardless of their history or the specific facts of their case or likelihood of success. These programs provide attorneys the opportunity to embody the values of public defense by ensuring that the government cannot exercise its incredible power and authority with impu-



“In a system that is designed to deprive clients of humanity, there is nothing more profound than standing with our clients to fight that system.”

—Ellen Pachnanda, Brooklyn Defender Services



nity. Providers should safeguard against the government taking away a person’s freedom without meeting the burden of proof to do so. This ethos, combined with the perspective that everyone deserves due process, forms the basis of the public defender and universal representation culture.

This approach involves more than a commitment to a certain mindset; it also has implications for the culture of a provider’s practice. Zealously pursuing any and all means by which a person may legally fight their case requires attorneys to have a dexterity of practice and pursue legal arguments beyond those to which they may have previously been accustomed.⁵⁸ For example, organizations that previously prioritized clients who had strong claims for relief may need to strengthen or expand their repertoire of defensive tactics. These new approaches may include challenging the allegations on the initial charging document (“Notice to Appear”) and disputing the constitutionality of the way ICE made the arrest or obtained evidence. Although the legal outcome of a case is not the only metric by which “success” is measured, zealous representation can often generate positive outcomes for clients even when such outcomes were initially thought improbable upon an initial consultation. (See “Redefining ‘success’” on page 42.)⁵⁹

Although universal representation will surely result in traditional “wins” allowing people to remain in the United States, many cases will end differently. Providers must embrace a broader definition of success, one measured not by a judge’s decision but by the degree to which due process and human dignity are protected in a system that undermines both. As Ellen Pachnanda of Brooklyn Defender Services told Vera, “We encourage our team to look at every moment we stand with our clients in court as a success. In a system that is designed to deprive clients of humanity, there is nothing more profound than standing with our clients to fight that system.”⁶⁰

Attorneys cannot guarantee that their clients will achieve a desired outcome, but they *can* typically control whether clients are able to make

Redefining “success”: Celebrating the impact and value of universal representation

Ellen Pachnanda with Brooklyn Defender Services suggests that providers use several tactics to promote a broad vision of success and impact within their organizations.⁶¹

- › **Celebrate encouraging moments and acknowledge disappointing outcomes.** Consider sending weekly roundups to the team that summarize moments of encouragement, acknowledge disappointment and “true losses,” and share tips and lessons. Do not celebrate only traditional “wins.” Whenever possible, look for ways to capture especially powerful moments, such as asking clients if they would like to take photos as they are released from custody—serving as an emotional testament to the tremendous effort it took to get to that moment, regardless of what happens next.
- › **Encourage staff to apply lessons learned to future efforts.** Management can encourage staff to train others to share what they have learned through practice, contribute facts and client stories to federal litigation, and support policy work intended to bring about systems change. This can help people take what they have witnessed—even disappointing outcomes—and use it to benefit the next case or campaign.
- › **Make space to acknowledge pain.** It can be extremely difficult when a client is removed, even when they accept

the order voluntarily. Pachnanda described as “a searing moment for our team.” Take the time to acknowledge that pain not only through collective support, but also by giving staff opportunities to help the loved ones left behind. Make sure staff receive recognition for how hard they worked on behalf of these clients and try to instill some sense of pride about the degree of dignity that was provided throughout the process—something that would not have existed but for universal representation.

- › **Set realistic expectations for staff new to the model.** Particularly for staff who come from triage models, acknowledge the progression from being accustomed to “winning” most cases to rethinking how “wins” are defined. Find ways to repeatedly acknowledge this progression in initial trainings and throughout case conferences. Although staff should always be encouraged to zealously fight cases using all available legal avenues even when the outlook seems dim, it is also important to have frank discussions about realistic outcomes in each case. Supervisors can help guide staff on how to have these necessary conversations with clients about expectations.

⁶⁰ Ellen Pachnanda, supervising attorney, Brooklyn Defender Services, November 1, 2020, via e-mail.

informed decisions and meaningfully participate in their own legal cases. While attorneys need to be prepared to make every possible argument for a client to remain in the United States, including checking the excesses of government enforcement and holding the government to its burden, they must also be ready to seek orders of voluntary departure or removal if that is what a client wants—particularly if the alternative is to remain detained for a prolonged period. Attorneys can still support their clients by engaging in departure planning to help them and their families prepare for deportation.⁶¹

Although difficult to measure in part because immigration detention and courts remain unjust even with counsel, “success” could be assessed by whether a client felt that their attorney treated them with dignity and respect during what is an otherwise inhumane process and whether they felt able to make informed decisions in their own case. Viewing success this way is critical to the culture shift required under universal representation because it centers the client’s interests and personhood and can help promote staff satisfaction and retention. (See “Staffing and managing legal teams” on page 46 for more on staff satisfaction.)

Training can help foster a culture of zealous defense

Providers can help foster this culture shift through training opportunities on substantive legal issues and other critical development areas. This ongoing training helps ensure that staff can adapt to rapidly changing areas of law, have the skills to deploy zealousness in their defense, understand the intersection between criminal and immigration law, and hone trial skills needed to navigate a hostile and complex court system. Experts within the organization or external trainers can provide the trainings. Participation in national networks—such as the SAFE Initiative or the Catholic Legal Immigration Network, Inc. (CLINIC)—can increase access to substantive legal trainings tailored to the needs of a universal representation program and can be particularly important in supporting staff at smaller programs that do not have the benefit of the training and mentoring infrastructure of a bigger organization.

Trainings can also address strengthening organizational culture, such as on racial equity and the intersection of race, criminalization, and the

immigration system; and on the concerns facing Black immigrants and immigrants of color, as well as Black staff and other staff of color. Organizations may wish to engage in advocacy trainings to help their legal teams understand how to elevate the stories of clients, their families, and other directly impacted community members. Trainings on “movement lawyering”—situating legal services within a theory of change in which lawyers take direction from directly impacted people—may also be particularly helpful.⁶²

The universal representation model affects the entire immigration system

While any model of representation provides the opportunity to develop new case law—yielding benefits beyond any one person—it is the ingenuity and dexterity of practice required under universal representation that makes its impact on case law unique. Because the model means

Changing unjust bond practices: The case of Martin Dubon Miranda

Representation through the Baltimore SAFE program led to an important change in bond proceedings in the Baltimore Immigration Court, ultimately benefiting all detained immigrants seeking bond in Maryland. CAIR Coalition represented Martin Dubon Miranda, who was denied bond by the immigration judge even as his partner was dying from end-stage renal failure, and the COVID-19 pandemic was exploding.^a As CAIR Coalition continued to fight Dubon Miranda’s deportation, the organization worked with the ACLU of Maryland to file a class-action lawsuit challenging the practice that required that people in detention prove they did not need to be detained, rather than requiring the government to prove that detention was necessary. This practice empowered the government to detain people in advance of a bond hearing without presenting any evidence or justification. The lawsuit also challenged the practice of judges imposing arbitrarily high bond amounts without considering whether a detained person could actually pay that amount—a form of money injustice that perpetuates ongoing detention simply because someone cannot afford to pay.^b The district court

agreed and issued a preliminary injunction requiring that the government bear the burden of justifying a person’s ongoing detention and that judges consider the detained person’s ability to pay when they set a bond amount.

Since this decision, people who had previously been denied bond have relied on the *Dubon Miranda* precedent to gain release and reunify with their families and communities. Immigration judges in Baltimore must now also consider alternatives to detention. The city’s universal representation program not only brought freedom and family reunification for Dubon Miranda and the other named plaintiffs, but also continues to promote the same for many others appearing before the Baltimore Immigration Court.

^a See *Miranda v. Barr*, No. 1:20-cv-01110, (D. Md. May 20, 2020), <https://perma.cc/D3LH-FWL8>.

^b Unlike in criminal proceedings, detained people in immigration proceedings must pay their full bond amounts to gain release.

representing people whose cases might not otherwise have been selected, attorneys have more opportunities to push the envelope, present novel arguments, and challenge existing law in ways that benefit a broader range of people. As attorneys pursue and win novel legal arguments with more regularity, other people—including those who remain unrepresented—will benefit from the legal precedent developed.

Further, the culture of the entire court shifts when there is a more consistent presence and higher volume of defense attorneys holding the government to its burden. Under this scrutiny, the government is increasingly forced to meet its burden of proving that it has authority under existing law to deport someone and that the deportation has been pursued in lawful ways. Immigration judges grow accustomed to lawyers appearing on behalf of all types of cases and presenting a wider range of claims, not just those of people with financial means or who were selected because their case seemed strong or otherwise compelling. This can also ultimately change the culture and practice of the entire bar by demonstrating that novel defensive arguments can succeed.

Overall, the presence of attorneys forces the court to operate in a more just and equitable way, though much more needs to be done to truly transform the system. Immigration judges agree; in an interview published in Vera's *Evaluation of the New York Immigrant Family Unity Project*, Sarah Burr, a retired assistant chief immigration judge, noted, "In order to have due process, you have to have representation of all of the parties before a judge."⁶³ Judge Robert Weisel, who also held that position and was quoted in the same report, commented that the presence of NYIFUP attorneys in the courtroom "raised the bar."⁶⁴ As judges and ICE counsel adjust to the realities of having attorneys on all types of cases, due process is strengthened.



Staffing and managing legal teams

An ideal legal team might include attorneys, paralegals, social workers or case managers, and administrative support specialists. Although funding may not always allow for this full complement of team members at a program's outset, each role is necessary to support balanced caseloads and holistic representation.

Zealous, person-centered representation requires sufficient staffing

Providers should consider the appropriate staffing needed to ensure person-centered representation and perform the following functions:

- › **Legal representation.** Thoroughly trained, experienced, and culturally competent attorneys who thrive in a collaborative environment and are eager to make innovative arguments are key to a well-functioning team. Attorneys must commit to staying on top of the changes in the law and exploring options for which there may not be a well-established precedent. An attorney may be one of the few people a client can trust or rely on, and therefore may be asked to provide support that goes beyond their legal expertise. Although attorneys should not be required to step into every role, they should be equipped with trustworthy resources to which they can refer their clients. Similarly, attorneys should call on other professionals when doing so will support client representation. For example, attorneys may want to involve a mental health professional when interviewing someone who is suffering from trauma.
- › **Supervision.** Staff supervision should be carefully considered when designing a program and during any point of expansion. Ideally, legal staff engaged in a complicated and ever-changing field of law will be able to count on mentorship, training, and supervision from more seasoned practitioners as well as from peers who can act as thought and strategy partners. It is important that supervisors be familiar with the heavy demands of detained removal defense to properly support attorneys and assign clients in a way that is sustainable. It is also important at the outset to provide staff with clear, realistic expectations related to their caseloads, responsibilities, and demands on their time. Supervisors should adopt regular check-ins to discuss case strategy and workload. Managers should consider how much time supervisors will devote to supervision relative to other work requirements, including their own caseloads. Providers should also contemplate supervisory structures for support staff. For example, paralegals can be directly supervised by staff attorneys they work with or by a paralegal manager/supervisor. As a program expands, a critical part of building sustainable capacity is reassessing supervision structures and any potential changes that may be necessary as a result of a growing staff.
- › **Administrative and legal support.** Legal representation programs need to track hearing dates, case deadlines, and timelines, as well as

compile exhaustive evidentiary documents and complete multiple legal forms. Administrative and legal support staff can often do these types of tasks most efficiently. Administrative support specialists can also submit invoices and oversee payment to experts, interpreters, and other subcontractors, as well as track and input data required for various funding purposes in the program database (necessary to track case progress and demonstrate program impact over time). Many managers report that providing paralegals with expanded roles and responsibilities in support of legal cases—including writing affidavits, liaising with family members, and collecting documents—results in increased job satisfaction for the legal support staff and the attorneys who can focus their time on tasks that require their skills and intervention. Similarly, U.S. Department of Justice-accredited representatives—who are not attorneys but can represent people in immigration proceedings—can be an important part of the legal team representing people before USCIS, EOIR, or the BIA.⁶⁵ Accredited representatives may supplement attorney capacity and add significant value to legal teams, provided that they have strong training and support, and close attorney supervision.

- › **Community engagement and outreach.** Implementing strong and successful local and state programs requires close collaboration among providers, CBOs, and representatives of local government. This includes not only direct community education but ongoing communication with CBO partners about referrals, clients' cases they are collaborating on, and program updates so that CBO staff can properly advise community members. Communication helps build community trust and set realistic expectations, which is particularly important when a program is not yet funded to serve everyone and the provider will necessarily have to turn some people away for lack of capacity. Collaboration also includes outreach to elected officials and government agencies to keep them apprised about the program. Providers can prioritize this work by ensuring that staffing time is allocated for it.
- › **Social work and case management.** To fully support clients and ensure holistic, person-centered representation, social workers or case managers should be integrated into legal teams, to strengthen the client's chance of being granted the desired legal outcome and

address the harms they have experienced throughout the detention and court process. “Providing support to clients in the midst of that experience impacts their ability to withstand it,” says Sarah Knight, social work supervisor at the Bronx Defenders. “The supportive roles are important not only because they support a legal goal, but because people deserve support and individualized, affirming representation as they navigate a harmful process that should not exist.”⁶⁶ Holistic

Addressing clients’ needs through holistic representation

Immigrant Defenders Law Center, based in Southern California, has created a case management team staffed by four case management associates and one coordinator. The team focuses on three core social service areas—housing, health (including mental health), and education—to support clients’ long-term healing and ability to engage in their cases. Case management associates connect clients and families with an extensive network of more than 90 vetted organizations that can help clients address a complex web of intersecting systems and needs. The case management team’s close ongoing collaboration with organizations in the region has strengthened its ability to address clients’ pressing needs in a timely way.

For example, when a father and his daughter were evicted from their apartment, the team helped them find emergency shelter and connected them to a local housing organization that was able to place them in a subsidized apartment. When a mother was diagnosed with throat cancer and had a major operation, the team was able to assist the family with transportation to and from the hospital and provided them with food and clothing donations. According to executive director Lindsay Toczyłowski, the team’s “role in creating linkages to community resources and social services gives families and individuals a sense of support, which ultimately allows them to be able to fully engage in the preparation of their legal case.”^a

The Bronx Defenders in New York City has a holistic defense team that includes four social workers and one supervisor, bringing an alternative and trauma-responsive skill set to the legal team. The partnership between attorneys and social

workers allows for a stronger approach to developing case theory and strategy, while also increasing capacity to attend to the impact of the process on their clients. The social workers’ roles include gathering information in a trauma-informed way; assessing clients’ psychosocial needs to identify and connect them with necessary resources; working with attorneys to prepare clients to testify about traumatic incidents; collaborating with attorneys to prepare mental health experts for trial testimony; and writing release plan letters in support of clients’ bond applications to ensure proper therapeutic service referrals and access to benefits upon release.

The supportive counseling the team provides to people in detention is particularly important because detention centers have inadequate supportive resources. The legal team is often the sole source of support to clients, who may also need direct assistance from social workers in preparing to testify about traumatic events in their past. The social work team also helps develop policy positions as a way to work toward broader change in addition to helping provide quality legal representation. “We believe in the positive impact of holistic defense,” says Knight, “yet it is also important to note that the long arc is towards the dissolution of the systems that enact these harms; the long arc is towards holistic defense being unnecessary because the system has been abolished.”^b

^a Lindsay Toczyłowski, executive director, Immigrant Defenders Law Center, December 18, 2020, via e-mail.

^b Sarah Knight, social work supervisor, the Bronx Defenders, January 8, 2021, via e-mail.

defense is most effective when it is a true partnership between lawyering and social work. In many states, it can also have the added benefit of extending the protections of the attorney-client relationship to the communications among social services staff and the client.

Staff recruitment should reflect an organizational commitment to universal representation

Centering the commitment to universal representation when hiring can help prepare new employees to transition most effectively to the model and get a sense of organizational culture. This preparation improves staff retention and satisfaction. In addition to assessing the requisite skills and experience, the following considerations might prove valuable for managers as they evaluate prospective job applicants:

- › Does the candidate indicate a genuine interest in and commitment to universal representation?
- › Regardless of whether they will work directly with clients, can the candidate explain why it is important to provide services for everyone, including people with criminal convictions? Does this belief include people convicted of serious violent crimes?
- › How does the candidate see their role as supporting clients' self-determination and autonomy?
- › Does the candidate recognize how intersecting identities—such as race, class, gender, and sexual orientation—affect people's life experiences, influence how the system and system actors respond, and impact their legal case?
- › Is the candidate a directly impacted member of the community?
- › Does the candidate have experience in or a commitment to working with community groups and coalitions to advance social change?
- › How does the candidate envision approaching work on an interdisciplinary legal team?

Although that list is not exhaustive, it lays the groundwork for considerations that providers must make when hiring under the universal representation model. As with any hiring decision, other related questions can help determine whether someone will be a good fit in the organization.

Support structures are vital for successful programs

Even the strongest legal programs should expect a lot of “losses,” because representing everyone means representing people with no legal options and having clients’ cases denied more often than in triage-based programs. Team support is critical to allowing staff the space and the tools to process their own reactions.

Because universal representation programs require daily attempts to disrupt systems of oppression, an organizational commitment to staff wellness is imperative to help support resilience and promote retention—both key to sustaining the work. This is particularly important for staff who share identities with the people they serve and must bear witness to the suffering and injustice they face as a result of that shared identity. Organizations should work to promote equitable workplaces and create wellness initiatives to support staff on a collective level, as well as encourage people to take the time, space, and opportunities to engage in self-care on an individual level.

“This is a highly charged, emotional, and combative practice area,” says Ellen Pachnanda of Brooklyn Defender Services.⁶⁷ “Create a team that is supportive and encouraging—as every day we are dealing with families torn apart, unwarranted detentions of mentally and medically vulnerable clients, and tremendous suffering. This takes a toll on everyone on the team, and you must take time to recognize the secondary trauma that is lived on a daily basis. Encourage self-care and taking breaks. . . . This support will encourage retention, which yields the expertise needed to carry these programs forward.”

“The same thing that we want to do for clients—minimize harm experienced in the process, increase opportunities for support during the process, and sustain our capacity to continue the fight—we want to do for ourselves and the culture of defense work,” says Sarah Knight of the Bronx Defenders.

“We want to be able to influence the work to happen in a more sustainable way so that we can continue long enough to change things systemically.”

Balanced workloads are critical for zealous representation, program sustainability, and staff satisfaction

Determining a reasonable workload for each attorney or legal team is important to ensure sufficient capacity to provide zealous representation, build a sustainable program, and reduce staff burnout and turnover that can result from unreasonably large caseloads. Although the numbers range across programs and attorneys, managers should attempt to discern how many clients their legal teams can responsibly take on at any given time while providing high-quality representation to as many people as possible. As programs grow and become more experienced, efficiencies of scale should result.

Many providers may be looking for guidance on how to set client caseloads for the organization and/or among staff. In practice, there is no

Expanding the defense bar: “There are simply not enough of us.”

A major obstacle in the growing movement for universal representation is the dearth of immigration attorneys and other legal services staff. A recent article by Bill Ong Hing, a professor of law and migration studies at the University of San Francisco and general counsel at the Immigrant Legal Resource Center, outlined the staggering gap between the need for representation and the capacity available through legal aid and pro bono attorneys and demanded federally funded representation of immigrants. He concluded, “There are simply not enough of us.”^a Although some observers have noted the growing interest in and demand by students in law schools for training on immigration law, the field is far from meeting that need.

One program working to fill the gap is Immigrant Justice Corps (IJC), the nation’s only fellowship program dedicated to increasing the quantity and quality of the nonprofit

immigration bar. “The fellows, selected after a highly competitive and selective process, include many young people with lived experience of the immigration system [who] are bilingual or multilingual,” IJC executive director Jojo Annobil wrote. “Their talent, passion, and commitment allow them to provide intersectional, dedicated legal counsel to the communities they serve.”^b Programs like IJC are important for building the foundation for a defense bar that is better trained and more effective. Expansion of these programs is necessary for realizing a fully funded national universal representation system.

^a Bill Ong Hing, “It’s Time to Create a Right to an Immigration Attorney,” *Slate*, July 8, 2020.

^b Jojo Annobil, executive director, Immigrant Justice Corps, September 16, 2020, via e-mail.

one formula or method, but—when considered together—several factors can help program managers determine reasonable caseloads. These include the following:

- › **Staff composition.** Although paralegals and other staff do not necessarily carry caseloads of their own, including them on a legal team goes a long way toward increasing the number of clients that any one attorney can handle.

✍ “We want to be able to influence the work to happen in a more sustainable way so that we can continue long enough to change things systemically.”

—Sarah Knight, The Bronx Defenders



- › **Staff experience.** As with most jobs, more experienced attorneys can likely handle heavier caseloads than newer staff can.
- › **Client population and case complexity.** One challenge associated with the universal representation model is the relative unpredictability of the types and complexities of cases. Clients may range from someone with a straightforward claim to someone requiring complex post-conviction relief to someone who has decided that they would like to return to their home country. These cases will resolve at different speeds and will affect the number of clients an attorney can handle.
- › **Case activity.** Providers should consider categorizing their workloads beyond whether a client’s case is open or closed. Some cases will involve more work or a higher level of activity than others, depending on the type and stage of the case and the client’s custody status. When people are detained, their cases usually move

much more quickly and require more activity in a condensed period, while the cases of people who are not detained may receive long continuances between hearings. As more clients get released, providers may be able to accept additional clients they would not otherwise be able to serve if all cases were equally time-intensive.

- › **Immigration court.** A number of factors associated with the local court and even individual immigration judges can affect caseloads. Judges and courts may have wide variations in case outcome rates or grants of release on bond; courts also vary substantially regarding average case time and backlogs.⁶⁸ These factors all have the potential to influence recommendations for caseload size.
- › **Distance.** The physical distance to a detention center and/or immigration court can have a significant impact on the number of clients an attorney can represent. Understandably, if attorneys must travel several hours to meet with clients and/or appear in a hearing, they will not be able to represent the same number of clients as if the court were down the street. Similarly, the use of technology such as videoconferencing or the ability of clients to make and receive legal phone calls can have a substantial impact on the time a case takes.

When necessary, incorporate support from pro bono attorneys to complement the program's scope of representation

The goal of universal representation is to create an established infrastructure for immigrant defense, fully funded by the government. The government must be made and held responsible for systems and an infrastructure that ensure fairness in our courts. This cannot be left to the grace of a volunteer corps—what one journalist likened to a safety net “sustained by the legal equivalent of a bake sale.”⁶⁹ Sarah Plastino, senior staff attorney at the Rocky Mountain Immigrant Advocacy Network, supports this sentiment. “Representation is a fundamental right and that right cannot be protected solely through the service of volunteers, without the [necessary] expertise and reliable resources.”⁷⁰

Because of the complexity of detained removal defense and the advanced expertise needed to defend a client effectively, these cases are often beyond what a pro bono attorney can conscientiously represent if they are not otherwise an immigration attorney. Thus, engaging pro bono attorneys requires that the program have sufficient capacity and resources



A reasonable workload for each attorney or legal team ensures sufficient capacity to provide zealous representation.



to support and mentor volunteers. These pro bono programs—in and of themselves—should not be seen as an adequate substitute for a fully funded system. Still, given the correct circumstances, pro bono attorneys can be used strategically to help bolster the defense infrastructure.

Any pro bono component of a program should be incorporated after the primary provider has a sound base of experienced attorneys, direct representation experience, and the resources to offer trainings and ongoing mentorship. Plastino recommends that pro bono attorneys help expand a universal representation program's capacity by bringing expertise to proceedings that are ancillary to the immigration case, including post-conviction relief, federal habeas corpus litigation, and appeals, thus broadening the scope of representation for detained immigrants in removal proceedings. Similarly, pro bono attorneys can bring much-needed resources to time-intensive and sometimes costly aspects of deportation defense, such as investigations and evidence gathering in a client's country of origin. Finally, another benefit of engaging pro bono attorneys and firms in universal representation programs is that their participation expands observations of the immigration court system to new audiences, broadening the base of people calling for increased transparency, fairness, and reform of a system that is exceptionally opaque, even in comparison to other legal systems.



Conclusion: Bringing programs to scale

Absent a federally mandated right to representation in immigration court, local and state universal representation programs are crucial to bringing fairness and due process into a system that sets immigrants up to fail. Effective implementation and program design are needed to bring these programs' mission to fruition. From the selection of providers to the particulars of caseload management and the nuances of billing systems, the universal representation model's central tenet of due process for *everyone* must inform every aspect of program implementation and design. The elimination of intake criteria, though extremely important, is only one of many elements necessary to run a successful universal representation program.

The goal of programs should be to scale up over time to meet the ever-expanding need locally, while continuing to pressure the federal government to fulfill its promise to protect due process for everyone. The

programs with the most success will be those that have funding secured over a multiyear period and where there is room to grow incrementally. These programs will grow stronger as they reap the benefits of economies of scale, building on the infrastructure investments made during the first year—and on the investments needed as programs expand—to serve increasing numbers of people.



**Universal representation provides
a critical vehicle for advocates,
organizers, providers, and governments
to actualize an immigration system
centered in human dignity.**



These locally and state-funded programs, in conjunction with existing federally funded programs, will serve as a blueprint for achieving zealous, person-centered universal representation that is federally mandated—and ultimately, an end to the country's unjust and inhumane immigration enforcement machinery. Universal representation provides a critical vehicle for advocates, organizers, providers, and governments to continue working collectively to actualize an immigration system centered first and foremost in human dignity.

Appendix

Billing and budget models

Developing a sustainable universal representation program that centers the provision of zealous, independent, and person-centered representation depends in large part on how the program is paid for. Billing and payment systems should provide for sufficient resources, incentivize efficiency, and promote the most fitting roles for all stakeholders.

Although **Vera advocates using the flat-rate budget model for universal representation programs whenever feasible**, it is good for program administrators to be familiar with other billing and payment systems used that may be more appropriate given the circumstances of their program. This allows providers and government funders to engage in meaningful conversations about representation costs and appreciate the advantages and disadvantages of each budget model, while also recognizing that local governments may have limits as to what billing and payment models are available.

Governments and providers may also consider using a hybrid model that uses multiple payment systems, particularly for programs involving multiple providers. For example, a program might compensate some providers using flat-rate budgets and others using hourly billing; this helps ensure that sufficient capacity is reserved in advance via flat-rate providers while maintaining flexibility to handle higher-than-expected case volume or conflict cases via hourly billing. Such a hybrid system also mitigates the risk to the government of overpayment in a fully flat-rate system.

The flat-rate budget model

With a flat-rate budget, providers represent a defined caseload at a predetermined rate, paid in regular installments over the course of the funding period. The caseload consists of cases that are open at the beginning of the year (“carryover” cases), as well as projected

new cases taken on over the course of the year. The flat rate should cover most aspects of the program: staff time, certain non-personnel expenses such as office rent, phones, and routine travel, and other costs associated with administering the program. Flat-rate budgets should typically not include variable case-specific costs such as expert witnesses or filing fees, which should be funded separately. To hedge against the unpredictability of case assignment volume over the funding period, flat-rate budget models should also include a mechanism for increasing or decreasing funding if the volume of new cases is substantially above or below the initial projection. Flat-rate budgets may be easier to implement for larger, more mature programs, given that administrators can better gauge case volume and reasonable caseloads based on past experience and data.

- › **Advantages:** The main advantage of flat-rate budgeting for all parties is predictability. The government knows in advance the total cost and number of cases the provider can take, while the provider knows what its income will be and can actively hire and train staff, a critical advantage for building infrastructure in a program. Flat-rate budgeting can also reduce the government’s intrusion into casework and the administrative burden on all parties, given that providers do not need to submit detailed hourly invoices. The lower administrative burden also translates into lower overall costs for providers and government administrators.
- › **Disadvantages:** Under a flat-rate budget, providers assume the risk of unusually complex or time-intensive cases to a greater degree than with hourly billing. In addition, flat-rate budgets may not be a good fit if program volume is small or unpredictable. Under this model, the

government risks overpayment if case volume is below expectations and risks having to add more funding (or leave some cases unrepresented) if volume exceeds expectations and additional funding or capacity is unavailable. Flat-rate budgeting can be particularly difficult at the beginning of a representation program if there is no case time and cost data on which to base budgets. To address some of the uncertainty in volume and costs, programs can do several things. First, providers and governments can use available data—including the number of unrepresented people in removal proceedings and cost data from similarly situated jurisdictions—to develop informed estimates. Second, providers and government funders should communicate and be flexible to the extent possible, so that both can accommodate higher or lower case volume. For example, if volume is lower than expected, the program can broaden its eligibility and residency criteria or expand the scope of funded services (for example, by including non-detained representation, affirmative representation, and community education). Such flexibility helps ensure that all parties can continue to benefit from the knowledge, experience, and infrastructure that has been created, and may decrease or eliminate the need for legal service providers to reduce staff during what may be a temporary drop in case volume.

The hourly billing model

Under an hourly billing system, providers negotiate hourly rates for staff and bill the funder for time spent working on cases. Hourly rates can be set for each employee or for categories of employees such as attorneys or paralegals.

- › **Advantages:** Hourly billing allows the government funder and provider to understand and develop data regarding the time, cost, and

volume of cases—data that may be particularly useful at the beginning of a program. Because providers are paid for exactly the amount of time that staff spend working on their cases, they are fully compensated for all work performed, eliminating the risk of underpayment if cases turn out to be more complex or time-consuming than anticipated. At the same time, the government pays only for work performed, limiting the risk of overpayment if cases are simpler or resolved more quickly than anticipated. Hourly billing is also highly flexible, because it does not require the provider to accept a specific number of cases; rather, the provider can accept as many cases as it has capacity for and bill for the amount of time spent working on them.

- › **Disadvantages:** As representation programs grow, hourly billing may have some drawbacks. It is administratively burdensome for providers to record and review individual billing charges, particularly for organizations not accustomed to charging or tracking their work on an hourly basis. The need for governments or third-party administrators to review detailed hourly billing invoices also involves a degree of intrusion into providers' casework, and programs should ensure that payment is not contingent on approval of case-level decisions by the government or administrator, a stipulation that would limit the independence of counsel. Hourly billing also provides little incentive for the provider to control costs and complicates proactive budgeting and staffing because costs can vary substantially depending on case volume, the complexity of individual cases, and other factors. If future revenue is uncertain, providers may be reluctant to hire new staff and add capacity to their programs. This model may also undermine and underfund the necessary

infrastructure of support work critical to a successful program but not attributable to a specific case, including training and professional development and other direct costs, including rent and technology equipment. Programs using hourly billing should permit providers to bill at their hourly rates for such activities or incorporate those costs into their hourly rates.

The fixed-cost-per-case budgeting model

Under this model, the government pays the provider a fixed amount of money for each case assigned. This cost can be structured to include all costs of representation or only certain costs. (For example, it could cover casework costs but exclude expert witness costs, which may not be incurred in all cases.) If this model is implemented, the fixed cost should have some flexibility to account for particularly complex or time-intensive cases—for example, a supplementary fixed cost could be paid if the case goes through multiple rounds of removal proceedings—and should be updated regularly to incorporate recent case cost data and projected future cost drivers. The cost can be paid in a lump sum when the case is initially accepted or can be paid in installments at certain milestones over the life of the case (such as half upon case acceptance and half upon case completion). For the reasons described below, the fixed-cost-per-case model is not recommended for use in immigration representation programs.

- › **Advantages:** Like the flat-rate budget model, the fixed-cost-per-case model provides some cost certainty for the government and income certainty for the provider, particularly when case volume can be reasonably predicted. It also allows for more flexibility than the flat-rate model, as the funder and the LSP do not have to agree to a set number of cases. The fixed-cost model also keeps the funder from intruding into the specifics of a case, as the provider is paid the same amount regardless of the outcome.

- › **Disadvantages:** The fixed-cost-per-case model has several significant disadvantages when compared to the hourly and flat-rate models. Just as with the hourly billing model, this model undermines and underfunds the necessary infrastructure of support work critical to a successful program but not attributable to a specific case. The most difficult aspect of the fixed-cost model is determining an adequate case cost, particularly at the beginning of a program when data about case costs may not yet exist. Even when case-cost data is available, it is necessarily backward-looking, so the fixed cost may not reflect the *current* cost of representation or incorporate projected *future* representation costs. This is especially important given the lengthy timelines of immigration proceedings, which often take years to resolve. This model also provides for less predictability about staffing and case volume than flat-rate budgeting does, although it can be translated to a flat-rate budget if the case volume can be anticipated in advance. If the fixed cost is paid out in installments over the life of the case, providers are forced to carry the costs of representation until those milestones occur, and that could be months or even years after the case begins. Under this model, the provider also bears the full risk of especially complex or time-consuming cases, unless the fixed cost can be supplemented or waived. The government also bears the risk of overpayment if cases turn out to be simpler or less expensive than anticipated.

The unit pricing model

Like the fixed-cost model, unit pricing involves setting a fixed cost for discrete “units” or activities involved in representation. For example, providers may set separate fees for pursuing bond, applying for relief, or appeals.

As with the fixed-cost-per-case model, the unit pricing model is not recommended.

- › **Advantages:** Under unit pricing, the provider is paid only for the activities performed in each case. Like hourly billing, this reduces the risk of overpayment by the funder while ensuring that the provider receives payment for all work performed.
- › **Disadvantages:** As with hourly billing, a significant disadvantage of unit pricing is that the major activities that take place in cases can be unpredictable, and payment occurs only after some work on a given case has been performed. This makes it difficult for a government funder to anticipate costs, because costs will depend on individual case-level decisions. It can also be challenging for providers to know in advance

what staff their budget can support. The disadvantages of this model can be mitigated by providing an initial up-front payment upon case acceptance to pay for case development and investigation, although unit pricing models should make clear the point at which payment is triggered (for example, whether payment is issued once a provider intends to begin work on a “unit” or stage of the case, upon its completion, or somewhere in between). As with the fixed-cost model, it can be difficult to determine a fair and adequate cost for each phase. Unit pricing may also incentivize providers to pursue strategies that result in additional payment but may not be the most efficient or effective use of time and resources, potentially to the detriment of the client.

Endnotes

- 1 Universal representation is an important short- or medium-term objective to help achieve the longer-term goal of ending detention. For example, because legal representation is so strongly associated with high court-appearance rates, a system of genuine universal representation may help significantly reduce or even eliminate the perceived need for immigration detention. For more information, see Emily Tucker, Shiu-Ming Cheer, Melissa Garlick, et al., *Advancing Universal Representation: A Toolkit—Module 2: Building the Movement* (New York: Vera Institute of Justice, National Immigration Law Center, and Center for Popular Democracy, 2020), 37-39, <https://www.vera.org/advancing-universal-representation-toolkit/building-the-movement>. Also see Nina Siulc and Noelle Smart, *Evidence Shows That Most Immigrants Appear for Immigration Court Hearings* (New York: Vera Institute of Justice, 2020), <https://perma.cc/W4MD-64TC>.
- 2 For example, some organizations have selection criteria that favor representing certain clients based on their countries of origin or status as survivors of domestic violence or trafficking.
- 3 For example, in the SAFE Initiative, most sites have an income restriction of 200 percent of the federal poverty level. For the federal poverty level for families of various sizes, see Social Security Administration, *Annual Statistical Supplement* (Washington, DC: Social Security Administration, 2019), Table 3.E8, <https://perma.cc/B5AB-JP7M>.
- 4 See Annie Chen, “Universal Representation Advances Racial Equity for Immigrants Facing Deportation,” Vera Institute of Justice, October 15, 2020, <https://perma.cc/3NH4-EZN6>.
- 5 Tucker, Cheer, Garlick, et al., *Advancing Universal Representation, Module 2*, 2020.
- 6 Vera defines “full-scope” representation as representation that spans the entirety of and includes all components of a person’s deportation case, as opposed to a particular hearing or stage (such as representation only for the purposes of obtaining bond).
- 7 The representation rate in immigration court fluctuates slightly over time. Historically, 81 percent of detained immigrants have lacked representation; from October 2000 through October 2020, 81 percent of all people in detention had never been represented (1,308,218 of 1,610,020 cases). The rate has improved slightly over the past two decades, and in recent years—from October 2012 through October 2020—just more than 70 percent of all people in detention had never been represented (396,805 of 547,665 cases), with the exact percentage varying slightly from year to year. See Transactional Records Access Clearinghouse (TRAC), “State and County Details on Deportation Proceedings in Immigration Court,” <https://trac.syr.edu/phptools/immigration/nta/>. This data is regularly updated and varies slightly from month to month.
- 8 For a map of all publicly funded deportation defense programs nationwide, visit www.vera.org/safe-initiative.
- 9 Vera Institute of Justice, *Taking the Pulse: Public Support for Government-Funded Attorneys in Immigration Court* (New York: Vera Institute of Justice, 2020), 1, <https://perma.cc/E45B-R9U5>.
- 10 New York City and New York State each fund and manage separate universal representation programs, both known as the New York Immigrant Family Unity Project (NYIFUP). For NYIFUP criteria, see New York Department of State, “NYS Liberty Defense Project & Vera Expand Legal Representation to Immigrants Facing Deportation Proceedings,” press release (Albany, NY: New York Department of State, February 15, 2019), <https://perma.cc/329L-4FTD>. For San Francisco criteria, see SFILDC, “About us,” <https://perma.cc/6ALZ-5TUE>.
- 11 The U.S. Census Bureau acknowledges the ways in which residents of one community can directly impact nearby communities. For example, the bureau often uses metropolitan statistical areas—defined as “a core area containing a large population nucleus, together with adjacent communities that have a high degree of economic and social integration with that core”—rather than city legal boundaries to establish geographic entities. See U.S. Census Bureau, “Metropolitan and Micropolitan – About,” <https://perma.cc/EX7F-MCJJ>.
- 12 *Gideon v. Wainwright* is the landmark case that established that the right to counsel is so fundamental to due process that if a person accused of a crime could not afford their own counsel it is incumbent on the government to provide counsel. 372 U.S. 335, [1963]. The U.S. Supreme Court has held that the right to due process applies to deportation proceedings. See *Reno v. Flores*, 507 U.S. 292, 306 [1993]: “It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”
- 13 See Donald Kerwin, *Strengthening the US Immigration System through Legal Orientation, Screening, and Representation: Recommendations for a New Administration* (New York: Center for Migration Studies, 2020), <https://perma.cc/TH6Q-NZW9>. For example, Vera’s National Qualified Representative Program, which arose out of the class-action lawsuit *Franco-Gonzalez v. Holder*, provides appointed legal representation to detained immigrants who have been found by an immigration judge or the Board of Immigration Appeals to be incompetent to represent themselves in their immigration proceedings because of a serious mental disorder. See Michael Corradini, “Projects: National Qualified Representative Program,” Vera Institute of Justice, <https://www.vera.org/projects/national-qualified-representative-program>; and *Franco-Gonzalez v. Holder*, No. 10-CV-02211 (C.D. Cal. Apr. 23, 2013), <https://www.aclu.org/legal-document/franco-gonzalez-v-holder-order?redirect=immigrants-rights/franco-gonzales-v-holder-order>. In addition, the Unaccompanied Children Program

- provides legal orientation and screenings to all unaccompanied children in the custody of the Office of Refugee Resettlement and legal representation to some of those children as a result of protections authorized by the Trafficking Victims Protection Reauthorization Act and the 1997 Flores Settlement Agreement, which set limits on the length of time and conditions under which children can be incarcerated in immigration detention. See Leandra Naranjo, “Projects: Legal Services for Unaccompanied Children,” Vera Institute of Justice, <https://www.vera.org/projects/legal-services-for-unaccompanied-children>; and *Flores v. Reno*, Case No. CV 85-4544-RJK (C.D. CA, 1997), settlement agreement, <https://perma.cc/BNW3-FJZC>.
- 14 Vera Institute of Justice, *A Federal Defender Service for Immigrants: Why We Need a Universal, Zealous, and Person-Centered Model* (New York: Vera Institute of Justice, 2021), <https://perma.cc/R2Y9-CW4E>.
 - 15 In *Gideon v. Wainwright*, the Supreme Court required representation for all people accused in criminal cases who could not afford it. But some argue that this important decision has failed to fulfill its promise because it did not mandate the structural conditions necessary for an effective defense, including sufficient resources, a limit on caseloads, and meaningful recourse when legal defense is ineffective. See Erwin Chemerinsky, “Lessons from *Gideon*,” *Yale Law Journal* 122, no. 8 (2013), 2676-2693, <https://perma.cc/EJC8-B333>.
 - 16 For more information on 2021 New York City Council funding, see www.nyc.gov/html/citycouncil/html/budget/expense_funding.shtml. For more information on NYIFUP pilot funding, see Jennifer Stave, Peter Markowitz, Karen Berberich, et al., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* (New York: Vera Institute of Justice, 2017), 10, <https://perma.cc/BAB5-JFKG>.
 - 17 See Module 2 for a more detailed description of local budgeting measures, particularly as they relate to political and advocacy strategy. Tucker, Cheer, Garlick, et al., *Advancing Universal Representation, Module 2*, 2020, 11-18.
 - 18 City of San Antonio Ordinance 2017-08-31-0614, <https://perma.cc/8DQA-99BM>.
 - 19 For example, after the 2016 election, the city council in Austin, Texas, approved a resolution directing the city manager to identify emergency funding for immigration legal services for Austinites, an action that ultimately led to the development of the city’s multiyear removal defense program. In Ohio, the Columbus City Council created the Columbus Families Together Fund as an emergency action to reallocate funds from public safety initiative funding to provide legal representation to protect against aggressive enforcement and family separation.
 - 20 Access to Representation Act, New York S. 7261 (filed January 15, 2020), <https://perma.cc/NE6U-UD4Y>; Right to Counsel in Immigration Proceedings Act, Illinois HB 0025 (filed January 14, 2021), <https://perma.cc/G68R-GEUL>; Right to Counsel in Immigration Proceedings Coordinator, Maryland SB 0317 (filed January 13, 2021), <https://mgaleg.maryland.gov/mgaweb/legislation/details/sb0317?ys=2021RS>.
 - 21 See Chen, “Universal Representation Advances Racial Equity,” 2020.
 - 22 Liz Cedillo-Pereira, chief of equity and inclusion, City of Dallas, August 12, 2020, via e-mail.
 - 23 Immigrant Legal Resource Center, “Houston Leads Coalition Celebrates \$2M Immigration Legal Services Fund for Low-income Harris County Residents,” press release (Houston: Immigrant Legal Resource Center, November 10, 2020), <https://perma.cc/JGU6-9R6V>.
 - 24 See Module 2 for more details on how CBOs, advocates, and impacted community members can collaborate on universal representation campaigns to get programs funded. Tucker, Cheer, Garlick, et al., *Advancing Universal Representation, Module 2*, 2020.
 - 25 In some locations, nonprofits (rather than governmental public defenders’ offices) are largely responsible for providing public defense. For example, this is true in New York City.
 - 26 Because the long-term goal of these programs is to create an infrastructure for public defense through institutional providers, private attorneys and small firms with limited capacity are not typical primary partners, though they can be engaged in more robust programs, for example by representing people when the primary provider has a conflict of interest.
 - 27 See Randy Capps, Muzaffar Chishti, Julia Gelatt, et al., *Revving Up the Deportation Machinery: Enforcement and Pushback under Trump* (Washington, DC: Migration Policy Institute, 2018), 38-46, <https://perma.cc/X8K5-G3CL>.
 - 28 “As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.” American Bar Association, “Model Rules of Professional Conduct: Preamble & Scope,” <https://perma.cc/N7KA-SNUW>.
 - 29 See Vera Institute of Justice, *Los Angeles Justice Fund: Year 2 Evaluation* (New York: Vera Institute of Justice, 2020), 40-41, <https://perma.cc/ZC4W-8M9G>.
 - 30 Without true universal representation, there will always be some unavoidable arbitrariness as to who receives representation. If only certain people attend the “Know Your Rights” session that is the basis for referrals, for example, the referral system has created an unavoidable bias that will systematically exclude other people. Moreover, providers should communicate the principles of the merit-

blind intake system to those referring potential clients, to make sure they are not triaging—a process that would undermine the program’s ability to provide everyone an equal opportunity to be served.

- 31 In June 2018, following a small protest directed at national immigration policies, ICE stopped allowing people who are detained to appear in person at the Varick Street Immigration Court. This had the severe consequence of depriving people of their due process right to appear in person for their court hearings. NYIFUP has adapted by screening and offering representation to people at detention facilities. See Liz Robbins, “New Yorkers Facing Deportation Lose Their [Physical] Day in Court,” *New York Times*, June 27, 2018, <https://www.nytimes.com/2018/06/27/nyregion/new-york-immigrants-deportation-video-hearings.html>.
- 32 See generally 8 U.S.C. § 1229, 1229a.
- 33 See generally 8 U.S.C. §§ 1182, 1225(b)(1)(A), 1227, 1228, 1229, 1229a, and 1231.
- 34 New York City Mayor’s Office of Immigrant Affairs, “MOIA & ONA Announce \$1M Investment in Rapid Response Legal Services for Immigrants Facing Imminent Deportation,” press release (New York: New York City Mayor’s Office of Immigrant Affairs, September 26, 2019), <https://perma.cc/VS45-Y3ZH>; and Office of New York State Governor Andrew M. Cuomo, “Governor Cuomo Announces New Measures to Assist Immigrants and Protect Them from ICE,” press release (Albany, NY: Office of New York State Governor Andrew M. Cuomo, March 14, 2019), <https://perma.cc/4XH2-5G5Q>.
- 35 The Legal Orientation Program (LOP) educates detained immigrants about their rights and the immigration court process so that they can make informed decisions about their legal cases. Eighteen legal service providers offer orientations about defenses against deportation and the court process and help people find pro bono representation. The U.S. Department of Justice’s Executive Office for Immigration Review funds LOP; Vera administers the program—which operates at 43 detention facilities—and the national LOP Information Line. The LOP presence within detention facilities has been pivotal for pilot programs, providing the infrastructure necessary to reach people, educate them about local universal representation programs, and facilitate referrals.
- 36 ICE has published several sets of national detention standards, including standards for access to counsel. See U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), *National Detention Standards for Non-Dedicated Facilities (Revised 2019)* (Washington, DC: ICE, 2019), <https://perma.cc/9ZYL-H428>; ICE, “2008 Operations Manual ICE Performance-Based National Detention Standards,” <https://www.ice.gov/detention-standards/2008>; and ICE, *Performance-Based National Detention Standards 2011* (Washington, DC: ICE, 2016) (rev.), <https://perma.cc/FLE8-D6PU>. For a discussion of the standards that implicate access to counsel, see American Bar Association, *Access to Counsel in Immigration Detention in the Time of COVID-19* (Chicago: American Bar Association, 2020), <https://perma.cc/ME3M-E5H9>. Also see American Civil Liberties Union, “Lawsuit: ICE Detention Centers Deny Detainees Contact with Attorneys,” press release (Los Angeles: ACLU Southern California, December 17, 2018), <https://perma.cc/W3B7-8A35>.
- 37 See National Partnership for New Americans, “Community Navigators,” <https://partnershipfornewamericans.org/community-navigators>.
- 38 Executive Office for Immigration Review Adjudication Statistics, “Median Completion Times for Detained Cases,” <https://www.justice.gov/eoir/page/file/1163621/download>.
- 39 For more information about how CBOs can support people after they are detained, see Make the Road New York, *Deportation Defense Manual* (New York: Make the Road New York, 2017), 45-49, <https://perma.cc/AQ38-SPYM>.
- 40 Unlike in criminal court, where the government has the burden of proving “beyond a reasonable doubt” that someone committed a crime, in immigration court people typically carry the burden of proving that they are eligible for relief to remain in the United States and that relief should be granted as a matter of discretion. Immigrants must do this in the context of a trial, unlike in criminal court, where many cases end in plea bargains. See INA § 240(c)(4)(A); 8 CFR § 1240.8(d). For a more detailed discussion of the various burdens of proof in immigration court, see Catholic Legal Immigration Network (CLINIC), *Practice Advisory: Rules of Evidence in Immigration Court* (Silver Spring, MD: CLINIC, 2020), 3, <https://perma.cc/CY73-LWVJ>.
- 41 Because many smaller programs have not been sufficiently funded to cover collateral proceedings, some providers engage pro bono support in these areas.
- 42 8 U.S.C. § 1101(a)(27)(J).
- 43 The Illegal Immigration Reform and Immigrant Responsibility Act and the Antiterrorism and Effective Death Penalty Act are a pair of immigration laws Congress passed and President Bill Clinton signed in 1996. For more information, see Immigrant Justice Network, Immigrant Legal Resource Center, and National Immigration Project of the National Lawyers Guild, “Fix ‘96: End the Mass Criminalization of Immigrants,” April 28, 2016, <https://perma.cc/8MTK-BH3Q>; Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208 (1996), <https://perma.cc/C5SX-WL75>; and Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (1996), <https://perma.cc/74FF-5BC3>.
- 44 For extensive information and resources about the intersection of criminal and immigration law, see the Immigration Defense Project website at <https://www.immigrantdefenseproject.org>.

- 45 Emily Kassie, “Detained: How the United States Created the Largest Immigrant Detention System in the World,” *The Marshall Project* and *The Guardian*, September 24, 2019, <https://www.themarshallproject.org/2019/09/24/detained>.
- 46 *Padilla v. Kentucky*, 559 U.S. 356 (2010), established that the Sixth Amendment right to effective counsel requires a criminal defense attorney to advise their client of the potential immigration consequences of pleading guilty to a criminal charge.
- 47 Immigrant Defenders Law Center, “Post-Conviction Relief Program,” <https://www.immdef.org/pcr>.
- 48 See Juliana Morgan-Trostle and Kexin Zheng, *The State of Black Immigrants—Part II: Black Immigrants in the Mass Criminalization System* (New York: Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, 2016), <https://perma.cc/NHM8-CFFZ>.
- 49 Even immigration judges have publicly decried the politicization of their courtrooms and asked for the creation of independent immigration courts situated outside of the U.S. Department of Justice. See Dana Leigh Marks, “I’m an Immigration Judge. Here’s How We Can Fix Our Courts,” *Washington Post*, April 12, 2019, https://www.washingtonpost.com/opinions/im-an-immigration-judge-heres-how-we-can-fix-our-courts/2019/04/12/76afe914-5d3e-11e9-a00e-050dc7b82693_story.html.
- 50 For example, as new programs and providers develop expertise on a wide range of claims, they will create resources—such as briefs, affidavits, and expert witnesses—that require a significant initial investment of time but will drastically increase the quality and efficiency of representation for future clients.
- 51 To read more about Chicago’s program, see The Resurrection Project, “Victory for the Chicago Immigrant Community,” <https://perma.cc/X9AU-YHBP>. For more on the program in Los Angeles, see Vera, *Los Angeles Justice Fund*, 2020, 3.
- 52 American Friends Service Committee, “NJ Coalition for Immigrant Representation Applauds Increased Funding to Detention and Deportation Defense,” September 29, 2020, <https://perma.cc/2WKN-KG6T>.
- 53 Although in 2018 the average detained case completion time was 40 days, many people remain in detention for months or even years. See Transactional Records Access Clearinghouse, “Immigration Court Processing Time by Outcome,” database (Syracuse, NY: Syracuse University), https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php. This information is updated monthly and may change as new data is added.
- 54 It is a best practice to fund these litigation expenses separate from casework costs, so that providers are not forced to choose, for example, between retaining an expert witness to perform a psychological evaluation and personnel expenses.
- 55 As of December 2020, the immigration court backlog stood at nearly 1.3 million pending cases, with an average length of nearly 900 days. See Transactional Records Access Clearinghouse, “Immigration Court Backlog Tool,” database (Syracuse, NY: Syracuse University), https://trac.syr.edu/phptools/immigration/court_backlog. This information is updated monthly and may change as new data is updated; see also Marissa Esthimer, “Crisis in the Courts: Is the Backlogged U.S. Immigration Court System at Its Breaking Point?” Migration Policy Institute, October 3, 2019, <https://perma.cc/QV9R-MVXJ>.
- 56 Governments and providers may also want to consider factoring in “wind-down” funds if government funding is ended; some billing and payment models are better equipped to do this than others.
- 57 In addition to more predictable expenses, such as personnel costs and office space, providers should also consider variable litigation expenses such as expert witnesses, interpretation, incidental expenses, and filing fees, which are highly dependent on the circumstances of each case. One benefit of neutral third-party administrators is that they can administer a separate budget for these variable costs so that providers do not risk under-budgeting (and having to cover necessary litigation expenses with other funding or forgo them altogether) or over-budgeting for them (and potentially having to refund part of their budgets).
- 58 American Bar Association, “Model Rules of Professional Conduct: Preamble & Scope,” <https://perma.cc/SQ7M-M4U6>.
- 59 For more information, see Karen Berberich, Annie Chen, Corey Lazar, et al., *Advancing Universal Representation: A Toolkit—Module 1: The Case for Universal Representation* (New York: Vera Institute of Justice, 2018), <https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1>.
- 60 Ellen Pachnanda, supervising attorney, Brooklyn Defender Services, November 1, 2020, via e-mail.
- 61 Although departure planning can take many forms, it might include activities such as contacting family members, arranging for the care and custody of children, preparing resource packets, encouraging clients to think about next steps after removal or connecting them with repatriation shelters in their home countries, communicating with consulates, and coordinating luggage with ICE.
- 62 For more information about training on movement lawyering, see Movement Law Lab’s resources and training series at <https://movementlawlab.org>.
- 63 Stave, Markowitz, Berberich, et al., *Evaluation of the New York Immigrant Family Unity Project*, 2017, 31, <https://perma.cc/BAB5-JFKG>.

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- 64 Ibid., 45.
- 65 Although accredited representatives can add legal capacity for removal proceedings, applications for immigration benefits, and case management, many other legal interventions require a licensed attorney, including complex removal proceedings, habeas cases, and collateral proceedings that happen outside of immigration court. (See “Designing an effective and scalable program” on page 20.) It is critical that attorney supervision be involved in legal strategy considerations in all cases.
- 66 Sarah Knight, social work supervisor, the Bronx Defenders, January 8, 2021, via e-mail.
- 67 Ellen Pachnanda, supervising attorney, Brooklyn Defender Services, November 1, 2020, via e-mail.
- 68 See TRAC, “Immigration Court Backlog Tool,” https://trac.syr.edu/phptools/immigration/court_backlog for information about average case time and backlogs by court.
- 69 Tina Rosenberg, “If You’re Like Me, You Can’t Sit By. This Is America,” *New York Times*, August 20, 2019, <https://www.nytimes.com/2019/08/20/opinion/children-immigration-court-lawyer.html>.
- 70 Sarah Plastino, senior staff attorney, Rocky Mountain Immigrant Advocacy Network, telephone interview by Liz Kenney, associate program director, Vera Institute of Justice, September 3, 2020.

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