

# The Fairness to Freedom Act of 2023 Summary

The Fairness to Freedom Act of 2023 establishes the right to legal representation at government expense for anyone facing removal from the United States who is unable to afford it.

## Background

Unlike in the criminal legal system, people facing deportation in the United States do not have a right to legal representation at government expense if they are unable to afford it. As a result, most immigrants who are unable to afford a lawyer must represent themselves in immigration proceedings. Over 1.3 million people, including adults, children, and families, are currently facing deportation in immigration court without legal representation, while many more are removed without representation in summary proceedings that take place outside of the courtroom.<sup>1</sup> The consequences of removal are devastating, separating people from their families and communities in the United States and putting their lives and liberty at risk after they are removed. Yet every day, noncitizens with limited English proficiency and little or no knowledge of America's complex immigration system are forced to defend themselves against removal and its catastrophic consequences.

Representation makes a difference. Studies have shown that immigrants with representation are up to 10 times more likely to obtain relief from deportation than those without, and that detained immigrants with representation are 3.5 times more likely to be granted bond, enabling their release from detention.<sup>2</sup>

<sup>1</sup> Immigration court data includes deportation cases with Notice to Appear dated from October 2000 through February 2023, extracted by Vera on March 22, 2023. See Transactional Records Access Clearinghouse (TRAC), "New Proceedings Filed in Immigration Court," accessed March 22, 2023, <https://trac.syr.edu/phptools/immigration/ntanew/>. For information on summary removal proceedings, see American Immigration Council, "A Primer on Expedited Removal," July 22, 2019, <https://www.americanimmigrationcouncil.org/research/primer-expedited-removal#>.

<sup>2</sup> Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no.1 (December 2015), 49-50, [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review); Emily Ryo, "Detained: A Study of Immigration Bond Hearings," *Law & Society Review* (2016), USC Law Legal Studies Paper No. 15-31, USC CLASS Research Paper No. CLASS15-29, Criminal Justice, Borders and Citizenship Research Paper No. 2628962, 1, <https://ssrn.com/abstract=2628962>.

## Summary

### The Fairness to Freedom Act will:

- › **establish a right to representation in removal proceedings, at government expense for people who cannot afford it.** The bill amends Section 292 of the Immigration and Nationality Act ([8 U.S.C. § 1362](#)) to provide that any person in any removal, exclusion, deportation, bond, or expedited removal proceeding who is financially unable to obtain representation in that proceeding is entitled to representation at government expense;
- › **ensure early, continuous, and full-scope representation.** The act requires counsel to be appointed at or before the start of proceedings and provided continuously at every stage of proceedings, including on any related matters before United States Citizenship and Immigration Services or in state or federal court, until all proceedings conclude;
- › **enable representatives to provide high-quality, holistic representation.** Representation under the act includes interpretation and translation services, and other services necessary for effective representation. The act also requires the government to automatically produce all information in its custody pertaining to the person in proceedings, including their “A-file”;
- › **require the government to facilitate access to counsel for people in its custody.** The act would require the government to ensure that counsel can meet with clients detained in Department of Homeland Security (DHS) or Department of Health and Human Services (HHS) custody in a confidential setting within the first twelve hours of the person’s detention;
- › **establish the Office of Immigration Representation to ensure high-quality, universal representation.** The act creates the office as an independent nonprofit to provide high-quality legal representation to all financially-eligible people. The office will establish and maintain standards for the provision of high-quality, full-scope representation for people facing removal, including ongoing training and professional development standards, and set reasonable, manageable, and sustainable appointed counsel caseloads;
- › **work with existing state and locally-funded removal defense programs to provide universal representation.** The office may provide grants or reimbursements to states and municipalities that fund representation for people facing removal, prioritizing those where representation is provided without exception for past interaction with the criminal legal or immigration systems, or similar exceptions. The office may also establish immigration public defender organizations, contract with community defender organizations, and establish private attorney panels to ensure universal representation; and
- › **ensure representation for people facing removal at the border.** The office’s representation plans for areas covering the U.S.-Mexico border region must include legal representation, and may include Attorney of the Day, attorney fellowship models, and other models to provide limited representation at the border and coordinate case transfers and referrals for people who are released or transferred within DHS or HHS.