

California Legislature

April 15, 2021

The Honorable Joseph Biden
President of the United States
1600 Pennsylvania Avenue NW
Washington, D.C., DC 20500

Dear President Biden,

As elected officials from the state of California, we urge you to expand federal programs and funding to provide legal representation and related services for the thousands of immigrants, including asylum seekers, children, and families, who face federal immigration court removal proceedings each year without the advice of counsel.

Despite the severe, often life-changing, consequences of deportation, the federal government still does not guarantee legal counsel for people in removal proceedings. In California alone, over 83,000 people faced immigration court proceedings unrepresented in fiscal year 2019. Nationwide, over 600,000 people went unrepresented in the same year. These people include asylum seekers who have fled persecution and severe violence including rape, abduction and torture. Most people in removal proceedings do not speak English and have almost no knowledge of immigration law or court procedures. It is nearly impossible for them to understand how to apply for humanitarian and other legal relief pursuant to complex federal law without the advice of counsel. Even more unfair, the federal government does not play a neutral role or help them determine if they are entitled to legal relief but instead employs a federal government attorney to bring deportation charges against them in court.

Statistically, legal representation dramatically increases the fairness of legal proceedings. In all cases, people are five times more likely to obtain legal relief if represented by counsel.¹ Only 5 percent of individuals who gained relief in deportation proceedings between 2007 and 2012 did so without assistance of counsel.² If someone is detained during proceedings, they are 10.5 times more likely to succeed in their cases when represented than when unrepresented.³ The rates of representation are still incredibly low. Nationwide at least 40 percent of those appearing in

¹ Ingrid Eagly and Steven Shafer, *Access to Counsel In Immigration Court* (Washington, DC: American Immigration Council, September 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

² Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (2015), 22-24 & figure 4, <https://perma.cc/7J65-CZCM>.

³ Eagly and Shafer, *Access to Counsel in Immigration Court*, 19.

immigration court are unrepresented by counsel, and a staggering 70 percent of detained persons face proceedings without counsel.⁴

The severe consequences of deportation and the complexities of the U.S. immigration court system necessitate that every individual be guaranteed a right to counsel that is funded by the federal government. In addition, providing greater access to counsel will save the federal government and taxpayers money by improving the efficiency of federal court operations, facilitating appearance rates at court, and the reducing federal detention costs.⁵ California has a particularly strong interest in ensuring funding for legal counsel in asylum and other immigration removal matters. Currently, the state funds representation through the One California Program which provides the Department of Social Services (DSS) with \$45 million for education services and pro bono representation. In fiscal year 2018 the program served 206,000 individuals⁶ in Deferred Action for Childhood Arrivals applications and deportation defense cases.⁷

California is shouldering these significant costs which not only ensure due process and fairness to thousands of people each year but also help the federal government improve the efficiency of its immigration court proceedings and save federal funds. In the absence of federal government funding, California leaders took action to protect our immigrant communities ourselves. As Assembly Speaker Anthony Rendon said in a statement, “The new [funding for services] we are adding to the budget will provide answers and help young Californians stay in the only country they’ve ever known.”⁸ The federal nature of immigrant enforcement and detention makes it incumbent on the federal government to bear the expense of representation for immigrants.

We are heartened by your declaration that the United States is a nation of immigrants and your proposal now embodied in the U.S. Citizenship Act of 2021 to provide legal counsel to people facing immigration deportation. Now is the time for the federal government to step up and

⁴ See Executive Office for Immigration Review, “Current Representation Rates,” October 13, 2020, <https://www.justice.gov/eoir/page/file/1062991/download>; Transactional Records Access Clearinghouse, “Who Is Represented In Immigration Court?” October 16, 2017 (finding that detained individuals were represented at a rate of about 30 percent from 2015 to 2017), <https://trac.syr.edu/immigration/reports/485/>.

⁵ Karen Berberich and Nina Siulc, “Why Does Representation Matter? The Impact of Legal Representation in Immigration Court” (New York: Vera Institute of Justice, November 2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf> (finding that legal representation increases the likelihood of obtaining bond by three times). Studies of over a decade of EOIR data since 2008 have found that people represented by counsel appear in court over 96 percent of the time, as a lawyer can help them navigate a complex system generally conducted in a language not their own. Ingrid Eagly and Steven Shafer, “Measuring In Absentia Removal in Immigration Court,” *University of Pennsylvania Law Review* 168, no. 4 (March 2020), 9, https://www.pennlawreview.com/wp-content/uploads/2020/06/Eagly-Shafer_Final.pdf (finding that people with legal representation received *in absentia* orders of removals in four percent of cases); American Immigration Council, “Immigrants and Families Appear in Court” (Washington, DC: July 2019), <https://www.americanimmigrationcouncil.org/research/immigrants-and-families-appear-court> (noting a 97% appearance rate over the past decade for all individuals placed in removal proceedings who are represented by counsel).

⁶ Eagly and Shafer, “National Study of Access to Counsel,” 2015, 9. See also Study Group on Immigrant Representation, *Accessing Justice*, 2011, 19; and Northern California Collaborative for Immigrant Justice, *Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California* (Palo Alto, CA: 2014), 18, 24, <https://perma.cc/P5YK-KBDS>.

⁷ California Department of Social Services, Services, <https://www.cdss.ca.gov/inforesources/immigration/services>.

⁸ Nick Cahill, COURTHOUSE NEWS (Sept. 12, 2017), <https://scvnews.com/california-governor-lawmakers-propose-30m-to-defend-dreamers/>.

ensure all indigent persons receive counsel in removal proceedings. We urge you to seek increased appropriations from Congress for these programs and pledge ultimately to expand these programs to cover all people facing federal immigration removal.

Sincerely,



Assemblymember David Chiu, AD 17



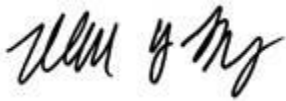
Senator Richard Pan, SD 6;
Chair, API Legislative Caucus



Assemblymember Evan Low, AD 28
Vice Chair, API Legislative Caucus



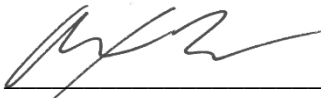
Assemblymember Ed Chau, AD 49



Assemblymember Phil Ting, AD 19



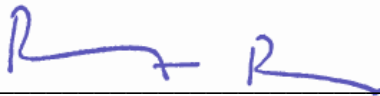
Assemblymember Al Muratsuchi, AD 66



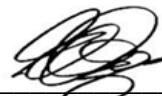
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Senator Maria Elena Durazo, SD 24
Chair, CA Latino Legislative Caucus



Assemblymember Robert Rivas, AD 30
Vice Chair, CA Latino Legislative Caucus



Assembly Majority Floor Leader Eloise
Gómez Reyes, AD 47



Assemblymember Lorena Gonzalez, AD 80



Senator Monique Limon, SD 19



Assemblymember Eduardo Garcia, AD 56



Senator Susan Talamantes Eggman, SD 5



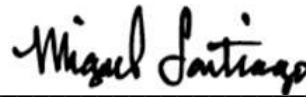
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Assemblymember Freddie Rodriguez, AD 52




Assemblymember Cecilia Aguiar-Curry, AD 4



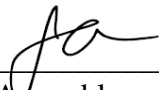
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Assemblymember Cristina Garcia, AD 58



Assemblymember Marc Levine, AD 10



Assemblymember Joaquin Arambula, AD 31



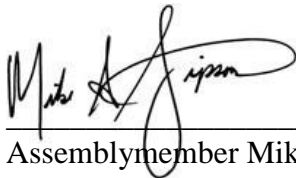
Assemblymember Ash Kalra, AD 27



Assemblymember Carlos Villapudua, AD 13



Assemblymember Jesse Gabriel, AD 45



Assemblymember Mike Gipson, AD 64



Assemblymember Mark Stone, AD 29



Assemblymember Rudy Salas, AD 32



Assemblymember Richard Bloom, AD 50



Senator Lena Gonzalez, SD 33