



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

The Honorable Charles Schumer  
Senate Majority Leader  
322 Hart Senate Office Building  
Washington, DC 20515

The Honorable Kevin McCarthy  
Speaker of the House of Representatives  
2468 Rayburn House Office Building  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Senate Minority Leader  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Hakeem Jeffries  
Minority Leader of the House of Representatives  
2433 Rayburn House Office Building  
Washington, DC 20515

Chairwoman Patty Murray  
U.S. Senate Committee on Appropriations  
154 Russell Senate Office Building  
Washington, D.C. 20510

Chairwoman Kay Granger  
U.S. House Committee on Appropriations  
2308 Rayburn House Office Building  
Washington, DC 20515

Vice Chair Susan Collins  
U.S. Senate Committee on Appropriations  
413 Dirksen Senate Office Building  
Washington, DC 20510

Ranking Member Rosa DeLauro  
U.S. House Committee on Appropriations  
2413 Rayburn House Office Building  
Washington, DC 20515

March 17, 2023

**RE: AILA Recommendations for Fiscal Year 2024 Appropriations**

Dear Leaders of the House and Senate:

The American Immigration Lawyers Association (AILA) is the national bar association comprised of more than 16,000 immigration law attorneys and professors. Every day, AILA members help people and businesses navigate complex law and procedures in nearly every aspect of the U.S. immigration system. Drawing upon these comprehensive perspectives, AILA strives to provide solutions for a more effective system that affords high quality service and fair and humane treatment to every individual it serves.

Toward that end, AILA offers the following recommendations for the fiscal year 2024 appropriations. We urge you to adopt an all-of-government approach to funding the agencies that comprise the immigration system rather than focusing singularly on an isolated part of the system, such as border management or the processing of employment or family visas. Severe,

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now chronic, backlogs plague most agencies, but especially U.S. Citizenship and Immigration Services (USCIS), the immigration courts, and the U.S. Department of State, resulting in backlogs that impact almost every type of case or application and impose hardships on businesses, families, asylum seekers and other migrants. In particular, any effort to alleviate pressure at the U.S. southern border will be far more successful if you ensure adequate funds for all immigration agencies to manage the millions of cases that are waiting upwards of 5 years for resolution.

### **Provide U.S. Citizenship & Immigration Services (USCIS) With Adequate Funding**

USCIS is responsible for the administration of immigration benefits and has a crucial role in ensuring a just, humane, and efficient immigration system. The agency's case backlog and crisis-level processing delays have led to individuals falling out of status or losing work authorization, families being separated, and U.S. businesses being unable to retain or attract much-needed talent.

In FY22, USCIS [utilized funding of \\$275 million provided by Congress](#) to reduce the net backlog of naturalization cases, reduce processing times for several form types, and adjudicated nearly double the typical number of employment-based visas. However, significant work remains. The [most recent data](#) confirms that the agency had more than 8,600,000 applications and petitions pending as of September 2022. According to its [expenditure plan for FY2022](#), the initial funding provided by Congress for that fiscal year would only be sufficient to address approximately 13 percent of the agency's net backlog at that time. Despite this, Congress did not allocate funding for USCIS to address its backlog in FY23.

AILA requests that Congress allocate a total of \$400 million to USCIS to address overall backlog reduction, including asylum, naturalization, and employment authorization backlogs, \$80 million to facilitate the agency's electronic processing/filing goals discussed in its congressionally mandated [five-year plan](#), and \$1 million to provide adequate resources to respond to the reporting requirements from previous appropriations legislation. In addition, Congress should provide funding of \$425.9 million to sufficiently fund the [March 2022 asylum processing rule](#). AILA welcomes the requests for USCIS funding included in the President's FY24 proposed budget including allocations to address backlog reduction and provide for fair and efficient asylum processing. However, we believe that funding in the amounts we've requested is crucial to ensuring the agency has adequate resources to increase transparency into the current state of the backlog, ensure continuity of employment during a historic labor shortage, and reduce the backlog to fulfill the agency's mission of a fair and efficient administration of benefits, without passing the cost on to its customers, such as families, small businesses, and nonprofit organizations.

A direct outgrowth of these case processing delays is that many congressionally authorized visas were not allocated and as a result were lost. To address this budget-related problem, AILA urges Congress to include authorizing language to [recapture](#) unused employment-based and family-sponsored dating back to FY1992 and diversity immigrant visas that were lost since FY 2020

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because of administrative delays, or never issued because of discriminatory and COVID-19 related bans. Adequate funding by Congress will help ensure that even more green card numbers are not lost in the future.

### **Prepare for Migration Encounters at the U.S. Southern Border**

AILA supports funding for the border modernization and infrastructure improvement efforts aiming for long-term sustainability and improvement. Budgetary measures that focus on emergency “surges” without *also* addressing long-term necessary infrastructure improvements perpetuate an endless cycle of addressing the border as an emergency without providing system-wide improvement. The reality is that migratory and displacement patterns throughout the region have changed. In addition to short-term funding, funding should be provided on a long-term basis to address noncitizens arriving at the U.S. southern border and should be done for the immigration system as a whole.

To that end, Congress should also adequately fund USCIS and the State Department to ensure sufficient hiring of asylum officers and to address the existing asylum and visa backlogs. Congress should invest in a long-term vision of how we receive and process noncitizens at the border by establishing an [Office of Migrant Protection](#) to coordinate the multi-agency, rapid scale-up of screening and protection capacity at high-volume areas on the southern border. This new office could establish short-term reception centers to manage efficient processing across agencies while also providing legal orientations, access to counsel, and social support from nonprofit organizations with experience in serving this population.

### **Fund Programs That Reduce the Use of Detention and Oppose Increases to Detention Capacity**

With respect to Immigration & Customs Enforcement (ICE), President Biden’s budget requests a decrease in funding to detain noncitizens. Consistent with the President’s budget, Congress should [significantly decrease funding](#) for immigration detention from unnecessarily high current levels of approximately \$2.9 billion annually (detention space for up to 34,000 noncitizens). Detention is costly, [inhumane and unsafe](#), and plagued by [ineffective oversight](#) that has proven incapable of preventing [abuses](#) of noncitizens. Specifically, the President’s budget requests funding for 25,000 noncitizens.

Instead of detention, Congress should invest in alternatives to detention that impose significantly less burdens on liberty and freedom of movement and [are far less costly](#). ICE’s alternatives to detention program [costs as little as \\$8 a day](#) compared to [the cost of detention which has a daily bed rate of \\$157.20](#). Congress should instead invest in alternatives to detention that impose significantly less burdens on liberty and freedom of movement. For example, AILA supports the President’s request for continued funding for the Congressionally authorized [case management pilot](#) operated by Federal Emergency Management Agency (FEMA) and the Office for Civil Rights and Civil Liberties (CRCL).

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AILA recommends Congress provide funding as it did in FY 2023 for [\\$10 million to improve legal access](#) for noncitizens in detention. According to the President's budget, [only 27 facilities out of approximately 130 ICE facilities](#) have virtual attorney visitation programs. ICE has located most detention facilities far from places where attorneys are readily available and who can conduct in-person visits. This heightens the need for remote communication such as confidential phone or video calls, the ability to fax and email legal paperwork, and consistent means to send and receive mail. For these reasons, we recommend a renewal of the \$10 million amount specifically for legal access in ICE detention.

### **Provide Funding for Fair Immigration Courts and Legal Representation**

For the immigration court system, AILA urges Congress to concentrate on funding initiatives that will improve the fairness of court operations and proceedings. The Justice Department should prioritize resources to address the structural problems plaguing the court, build due process and fairness norms into the adjudication process, and adhere to transparent decision-making. The courts still struggle with basic mechanics, such as providing adequate support staff to manage courts, regulating the use of virtual hearings, and providing proper notice of hearing changes. Inadequate notice leads to people failing to appear and judges unfairly ordering them removed *in absentia*. While the courts have made important strides, the Department of Justice has not invested adequately to ensure basic due process for the immigration courts it oversees.

Of the President's budget request for the immigration courts which represents an increase of nearly \$595 million above the FY 2023 enacted level, AILA specifically recommends Congress provide funds for a pilot legal representation program for people who cannot afford counsel and related programs such as the Legal Orientation Program. AILA supports the President's request for \$150 million to increase access to legal representation though a higher amount of \$400 million is needed. Federal law guarantees the right to legal counsel in removal proceedings, but the government still does not ensure legal counsel paid for by the government for people who are indigent. Over the last 20 years (2003-2022), more than 55 percent of people appearing in immigration court were unrepresented, a statistic that is consistent with [court data](#). Represented immigrants are [five times](#) more likely to obtain legal relief if they are represented by counsel, and people who are detained are [ten times](#) more likely to succeed. Legal representation also advances the government's interest in ensuring efficiency in our nation's immigration courts—which faces a [backlog of more than 2 million](#) cases. Providing legal representation relieves a significant burden on court staff who expend valuable time assisting *pro se* individuals in proceedings. Federal funding is urgently needed to expand to a nationwide level the legal services capacity that many [states and localities](#) have initiated.

### **Conclusion**

While our immigration system is complex, there are commonsense investments that Congress can make to meet the needs of this country. We urge your consideration of AILA's recommendations as you work on the appropriations bills. For additional information, please

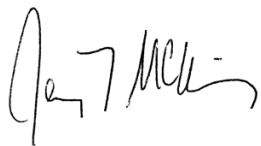
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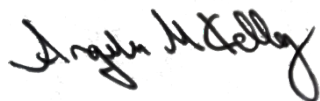
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