

August 30, 2024

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Submitted via email to info@acus.gov

RE: Comments on Nonlawyer Assistance and Representation

Dear Matthew Gluth:

On behalf of UnidosUS, we respectfully submit these comments in response to the Administrative Conference of the United States's request for input regarding nonlawyer assistance and representation.

UnidosUS, formerly known as the National Council of La Raza, is the nation's largest Latino civil rights and advocacy organization. For over 50 years, we have worked to create opportunities for Latino families, enhancing their contributions to our country's social and economic fabric. Our network of affiliates includes 306 community-based organizations across 38 states, the District of Columbia, and Puerto Rico, providing education, healthcare, immigration, housing, workforce development, financial empowerment, and other vital services to millions of Latinos each year.

Our close collaboration with 52 Affiliates offering immigration legal services, 46 of which are Department of Justice-recognized organizations with approximately 141 Accredited Representatives, gives us unique insights into the impact of nonlawyer representation. These Affiliates deliver free or low-cost, high-quality immigration legal services daily to their communities.

Since 2014, UnidosUS has provided capacity-building support and one-on-one technical assistance to Affiliates interested in establishing and sustaining immigration legal services programs. In partnership with national immigration advocacy organizations, we aim to scale and strengthen the field of immigration legal service providers through the Department of Justice Recognition and Accreditation Program. Accordingly, our comments focus on the landscape and effectiveness of this program.

Context: The R&A Program and Growing Need for Immigration Legal Services

Since its inception in 1958, the U.S. Department of Justice (DOJ) has operated the Recognition and Accreditation (R&A) Program to authorize qualified legal representatives to provide assistance in immigration matters before the Department of Homeland Security (DHS) and the Executive Office for

Immigration Review (EOIR).¹ The program “aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice.”² EOIR’s Office of Legal Access Programs (OLAP) administers the program’s regulations, and Accredited Representatives may only provide immigration legal services through Recognized Organizations, which are typically non-profit, federally tax-exempt entities.

While most DOJ-recognized organizations offer immigration legal services, many do not primarily identify as such.³ The roster of approximately 877 recognized organizations includes public libraries, workforce development programs, domestic violence shelters, English language programs, labor unions, faith-based charities, family resource centers, resettlement agencies and community health centers.⁴

Accredited Representatives, who are either employees or volunteers at these recognized organizations, are granted authority by OLAP at two levels: partial or full accreditation.⁵ Representatives with partial accreditation can assist with immigration matters before DHS agencies, including U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Enforcement (ICE), and U.S. Customs and Border Protection (CBP). This includes handling applications for naturalization, permanent residency, humanitarian visas, employment authorization, temporary protected status, and affirmative asylum.⁶ Fully accredited representatives, in addition to the above, can represent clients before immigration courts and during administrative appeals before the Board of Immigration Appeals (BIA).

Despite having around 2,484 accredited representatives⁷ across the country—2,136 partially accredited and 348 fully accredited—this number falls short of addressing the growing demand for immigration legal services. A recent study found only one legal professional, including attorneys, federally accredited non-attorneys, paralegals, and legal assistants, for every 1,413 undocumented immigrants in the U.S.⁸ The shortage is even more severe in rural areas, such as Alabama, where there is only one legal professional for every 6,656 undocumented immigrants, and Kansas, with one for every 3,010 undocumented immigrants.⁹ This capacity shortfall also overlooks the wide range of applications and proceedings where immigrants lack adequate legal representation. Services are needed for complex

¹ U.S. Dep’t of Justice, Recognition and Accreditation Program, U.S. Dep’t of Justice, <https://www.justice.gov/eoir/recognition-and-accreditation-program>

² *Id.*

³ Michele R. Pistone, The Crisis of Unrepresented Immigrants: Vastly Increasing the Number of Accredited Representatives Offers the Best Hope for Resolving It, 92 Fordham L. Rev. 893 (2023), <https://ir.lawnet.fordham.edu/flr/vol92/iss3/5>.

⁴ U.S. Dep’t of Justice, Recognized Organizations and Accredited Representative Roster: Number of Recognized Organizations (Aug. 24, 2024). <https://www.justice.gov/eoir/page/file/942301/dl?inline>

⁵ U.S. Dep’t of Justice, Recognition and Accreditation Program, Frequently Asked Questions, (2024) <https://icor.eoir.justice.gov/en/faq/>

⁶ Pistone, *supra* note 3.

⁷ U.S. Dep’t of Justice, Recognized Organizations and Accredited Representative Roster: Number Accredited Representatives (Aug. 24, 2024). <https://www.justice.gov/eoir/page/file/942311/dl?inline>

⁸ Don Kerwin & Evin Millet, Charitable Legal Immigration Programs and the U.S. Undocumented Population: A Study in Access to Justice in an Era of Political Dysfunction, 12 J. Migration & Hum. Sec. 1 (2022), <https://journals.sagepub.com/doi/full/10.1177/23315024221124924>.

⁹ *Id.*

cases, such as asylum claims or removal defense, and for affirmative matters like naturalization applications or family-based petitions.¹⁰

Furthermore, from Fiscal Year 2013 and Fiscal Year 2023, USCIS saw a 52% rise in immigration form submissions, from 6.9 million to 10.5 million, while pending cases awaiting adjudication tripled from 3.0 million to 9.0 million.¹¹ Although USCIS reported a 15% reduction in its backlog for Fiscal Year 2023, with a record 10.9 million filings received and 10.0 million completed¹², challenges persist. Currently, around 3.7 million cases are active before the Immigration Court¹³, and approximately 36,326 immigrants are in ICE detention¹⁴. Expanding access to legal representation by increasing the number of accredited representatives can help alleviate these backlogs by ensuring fair hearings, improving court efficiency, and reducing delays.¹⁵ Individuals with legal representation are typically better prepared for federal appointments and have more complete and accurate filings, all contributing to a more streamlined immigration process.

Lawyers alone cannot meet the increasing demand for affordable, high-quality legal services. The lengthy and complex process of entering law school, passing bar exams, and mastering immigration law is much slower than the process of becoming an accredited representative.¹⁶ While the number of cases handled by lawyers has risen significantly, it has not kept pace with the rapid increase in cases needing representation.¹⁷ For instance, due to the shortage of pro bono legal representation, immigrants seeking asylum or other forms of relief have just a 2 percent chance of finding a volunteer attorney.¹⁸ Expanding the number of accredited representatives is a more practical and efficient solution, as it can be scaled up more easily and quickly than training new lawyers. Despite this, the R&A program remains considerably underutilized, even as demand for legal representation rises due to increasingly complex immigration laws and growing global migration.

Improving and Expanding the R&A Program

To address the growing demand for immigration legal services and enhance the effectiveness of the Recognition and Accreditation (R&A) Program, several key improvements are essential:

- **Streamline the recognition and accreditation process.** This can be achieved by hiring and training additional staff within the Office of Legal Access Programs (OLAP) to expedite application adjudication. Additionally, investing in technology to automate parts of the

¹⁰ Muzaffar Chishty, Charles Kamasaki & Laura Vazquez, Advancing Immigrant Legal Representation: The Next Fifteen Years, 92 Fordham L. Rev. 865 (2023), <https://ir.lawnet.fordham.edu/flr/vol92/iss3/3>.

¹¹ Congressional Research Service, U.S. Citizenship and Immigration Services (USCIS): Operations and Issues for Congress (Apr. 5, 2024), <https://crsreports.congress.gov/product/pdf/R/R48021>.

¹² U.S. Citizenship & Immigration Servs., End-of-Year Report for Fiscal Year 2023, <https://www.uscis.gov/EOY2023>.

¹³ Transactional Records Access Clearinghouse, Immigration Court Quick Facts, <https://trac.syr.edu/immigration/quickfacts/eoir.html>.

¹⁴ Transactional Records Access Clearinghouse, Immigration Detention Quick Facts, <https://trac.syr.edu/immigration/quickfacts/detention.html>.

¹⁵ Immigrant Justice Corps, Issues: Access to Counsel, <https://immigrantjustice.org/issues/access-counsel>.

¹⁶ Pistone, *supra* note 3.

¹⁷ *Id.*

¹⁸ Transactional Records Access Clearinghouse (TRAC), Despite Efforts to Provide Pro Bono Representation, Growth Is Failing To Meet Exploding Demands, (2023) <https://trac.syr.edu/reports/716/>

application process will help manage the growing volume of requests and reduce delays, ensuring timely delivery of vital immigration legal services.

- **Invest federal resources to build the capacity of organizations to establish and sustain immigration legal services programs.** Federal funding, like the USCIS Citizenship and Integration Grant Program and the Legal Orientation Program, will support developing and expanding legal services programs. As the White House Legal Aid Interagency 2023 report on Nonlawyer Assistance and Other Strategies report states, federal agencies would benefit from funding programs that support nonlawyer representatives.¹⁹ Additionally, federal investments would support scaling innovative solutions including career pathways programs designed to provide upward mobility paths for prospective accredited representatives.
- **Increase public awareness of the R&A program.** Launching targeted outreach campaigns with community organizations can increase visibility among immigrant communities, potential volunteers, and prospective immigration advocates about the benefits of the R&A program. Partnerships and engagement with stakeholders can further amplify these efforts and highlight the program's impact on improving access to legal representation.
- **Office of Legal Access Programs (OLAP), the Department of Homeland Security (DHS), and the Executive Office for Immigration Review (EOIR) should provide more comprehensive data.** OLAP should regularly publish detailed information on the number of pending applications for Recognition and Accreditation along with projected timelines for application processing. This will help applicants and recognized organizations better understand the current workload and anticipated wait times. Also, DHS and EOIR should release data on the number of applications represented by accredited representatives. By providing this information, the agencies can demonstrate the impact and effectiveness of accredited representatives in handling immigration matters. Increased transparency in these areas will not only foster greater trust in the R&A program but also enable more informed decision-making by all stakeholders involved.

In sum, scaling and enhancing the R&A Program represents a critical access-to-justice solution in addressing the growing need for immigration legal services. By streamlining processes, expanding training, increasing public awareness, investing in organizational capacity, and improving data transparency, the program can significantly increase its reach and effectiveness. These improvements will not only help manage the escalating demand for legal assistance but also ensure that more immigrants receive the affordable, high-quality representation they need.

Relevant Studies and Data on the R&A Program and the Need for Immigration Legal Services

Beyond the publicly available data from federal agency websites, the following key studies and data tools offer valuable insights into the need for immigration legal services, the benefits of the R&A program, and potential improvements to the program. These resources highlight the importance of increasing nonlawyer representation before the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR), including recommendations for growing a diverse pool of culturally responsive and bilingual accredited representatives.

¹⁹ U.S. Dep't of Justice Office for Access to Justice, Legal Aid Interagency Roundtable 2023 Report: Access to Justice in Federal Administrative Proceedings: Nonlawyer Assistance and Other Strategies (2023) <https://www.justice.gov/d9/2023-12/2023%20Legal%20Aid%20Interagency%20Roundtable%20Report-508.pdf>

Part 1: Demand for low-cost, high-quality immigration legal services

Don Kerwin & Evin Millet, Charitable Legal Immigration Programs and the U.S. Undocumented Population: A Study in Access to Justice in an Era of Political Dysfunction, 12 J. Migration & Hum. Sec. 1 (2022), <https://journals.sagepub.com/doi/full/10.1177/23315024221124924>.

The paper examines the legal capacity available to low-income immigrants on national, state and sub-state levels. Legal professionals working in charitable immigration service programs serve as the study's rough proxy for legal capacity, and undocumented immigrants are the proxy for legal need. The paper finds that there are 1,413 undocumented persons in the United States for every charitable legal professional, and documents the states metropolitan areas, and counties where there is far *less* capacity.

Charles Kamasaki, Susan Timmons, et al, Immigration Reform and Administrative Relief for 2014 and Beyond: A Report on Behalf of the Committee for Immigration Reform Implementation (CIRI), Human Resources Working Group, Journal on Migration and Human Security (2015)

<https://journals.sagepub.com/doi/pdf/10.1177/233150241500300303>

The paper focuses on the funding and human resources that the immigrant service delivery field, writ large, would require to implement large scale legalization programs proposed by the Obama administration that did not go into effect. The paper finds that the immigration legal services field would need to triple in size to meet the need for those eligible under expanded DACA and the DAPA policy announced in 2014.

Don Kerwin, Roberto Suro, et al, The DACA Era and the Continuous Legalization Work of the US Immigrant-Serving Community, (2017)

https://www.researchgate.net/publication/313656317_The_DACA_Era_and_the_Continuous_Legalization_Work_of_the_Immigrant-Serving_Community

The paper's findings include that increased support to community-based organizations to screen the undocumented would put large numbers of undocumented immigrants on a path to legal status, even without a change in the law; and DACA saw substantial growth in "whole of community" responses to immigrant service-delivery and community organizing.

Transactional Records Access Clearinghouse (TRAC), Despite Efforts to Provide Pro Bono Representation, Growth Is Failing To Meet Exploding Demands, (2023) <https://trac.syr.edu/reports/716/>

Based on immigration court records of cases where an attorney appearance was entered, TRAC finds that although there have been significant organized efforts by immigrant rights groups, attorney associations, NGOs and local communities to provide legal representation in immigration courts, there are not enough attorneys to keep up with a growing demand.

Part 2: State reports on the lack of capacity for immigration legal services

Immigrant Arc, Justice for All: Challenges and Opportunities in Ensuring Access to Counsel for Immigrant New Yorkers, (2021)

https://static1.squarespace.com/static/5e59359723b7d46f1ba15b75/t/61b2323967a34a20415219c1/1639068217665/JusticeforAll_Report-2021-3.pdf

The report highlights key challenges and growing needs within the immigration legal field in New York, particularly in light of recent legislative changes and increased refusals of entry. It provides resources and data on caseloads, supervisory responsibilities, waitlists, case durations, and annual case management, underscoring the expanding demand for immigration services in the U.S. The report aims

to shed light on the essential role of immigration legal representatives and the difficulties they encounter in navigating a rapidly evolving legal landscape.

The Resurrection Project, *Assessing Capacity to Provide Legal Services to Undocumented Immigrants in Illinois*, (2022) <https://resurrectionproject.org/assessing-legal-capacity/>

The report explores the current population of undocumented immigrants in Illinois, the landscape of legal service providers, and recommendations to rise to meet the demand for services. Some recommendations include investments in training and capacity-building needs, such as individuals seeking DOJ accreditation and support for the DOJ-recognized organizations.

Grantmakers Concerned with Immigrants and Refugees, *Immigration Legal Services in California: A Time for Bold Action*, (2022) https://www.gcir.org/sites/default/files/resources/GCIR_Legal-Services-Assessment-2020-and_2022-Update_STC.pdf

The report provides recommendations to enhance immigration legal services in California based on interviews with legal service staff and a statewide survey. Key suggestions include expanding the pool of culturally responsive and bilingual attorneys, improving coordination among service providers, increasing organizational capacity, and aligning funding with these needs. The report also advocates for strengthened collaboration among funders, state agencies, and grassroots organizations, and emphasizes the importance of funding research and evaluation to guide strategic investments.

Part 3: Key slice of the solution is the R&A Program

Erin B. Corcoran, *Bypassing Civil Gideon: A Legislative Proposal to Address the Rising Costs and Unmet Legal Needs of Unrepresented Immigrants*, 115 W. VA. L. REV. 643 (2012) <https://wvlawreview.wvu.edu/files/d/9ab8789d-0732-4e53-985f-32a547833e84/corcoran.pdf>

The article makes the case for expanding immigrants' access to qualified and trained accredited representatives and providing federal funding for non-profits to hire additional accredited representatives would go a long way to solve the problem of unmet legal needs in the immigration context. "Increasing access to these accredited representatives would provide immigrants with accurate counsel and advice about the availability of immigration relief, reduce backlog and delay within the immigration agencies, save the federal government money, and ensure the individual has a competent advocate demanding fair adjudication of his or her application for immigration relief."

Karen Sullivan, *The Severely Under-Resourced R&A Program is an Essential Tool to Meet Growing Needs for Affordable Immigration Legal Services*, CLINIC Policy Brief (2021) <https://www.cliniclegal.org/resources/federal-administrative-advocacy/policy-brief-severely-under-resourced-ra-program>

The policy brief describes the Recognition and Accreditation program that has existed since the 1950s within the U.S. Department of Justice and its importance in ensuring immigrants have access to immigration legal services. The brief provides a profile of an accredited representative and policy recommendations to improve the function and efficiency of the program.

Muzaffar Chishti, Charles Kamasaki & Laura Vazquez, *Advancing Immigrant Legal Representation: The Next Fifteen Years*, 92 Fordham L. Rev. 865 (2023), <https://ir.lawnet.fordham.edu/flr/vol92/iss3/3>.

The article highlights the urgent need for improved legal representation for immigrants, emphasizing the significant increase in asylum applications and deportation proceedings and affirmative immigration applications. The article credits Judge Robert Katzmann's 2007 initiative and the subsequent creation of the Immigrant Justice Corps for addressing this need. Despite progress, the proportion of immigrants

with legal representation has declined, exacerbating disparities in due process and access to relief. The authors discuss innovative solutions, such as increased funding for legal services, training for nonlawyer navigators, and technology-driven models, to bridge the widening gap between legal service demand and availability.

Michele R. Pistone, *The Crisis of Unrepresented Immigrants: Vastly Increasing the Number of Accredited Representatives Offers the Best Hope for Resolving It*, 92 *Fordham L. Rev.* 893 (2023).

<https://ir.lawnet.fordham.edu/flr/vol92/iss3/5>

This article argues that the healthcare industry's experience with physician assistants and nurse practitioners in the 1960s, which addressed shortages and expanded access, offers valuable lessons for improving immigration legal representation. It explores how representation significantly benefits immigrants and why relying solely on pro bono attorneys is insufficient. The author advocates for expanding the role of accredited representatives, drawing parallels with the healthcare model to propose strategies for growth and increased effectiveness in immigration law.

Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council Special Report (2016)

https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf

The report presents national study on access to counsel in U.S. immigration courts, analyzing over 1.2 million deportation cases from 2007 to 2012. It reveals that only 37% of immigrants had legal representation, with significant disparities based on detention status and location. Detained immigrants faced the greatest barriers, securing representation only 14% of the time compared to two-thirds of non-detained immigrants. The study underscores that immigrants with legal counsel fare better at every stage of the court process, including higher chances of seeking and obtaining relief from deportation.

The R&A Program is a crucial part of the immigrant legal services ecosystem.²⁰ Ultimately, expanding and enhancing the R&A Program through public- and private-sector efforts will increase and improve access to justice for immigrants.

Should you have any questions or would like to discuss any of the topics in further details, contact Laura Vazquez, Director of Immigrant Integration at UnidosUS, at lvazquez@unidosus.org. Thank you for your commitment to increasing access to legal assistance and representation in immigration matters.

Sincerely,

Laura Vazquez
Director of Immigrant Integration
UnidosUS

²⁰ U.S. Dep't of Justice Office for Access to Justice *supra* note 19.