



## **United States Citizenship Act of 2021: A Brief Primer on the Due Process, Detention, and Court Reform Provisions<sup>1</sup>**

This primer summarizes some of the key provisions of the United States Citizenship Act of 2021 (USCA, sometimes referred to as the “Biden bill”) relating to due process protections in the immigration court system and in removal proceedings.

**First**, the USCA would increase the use of the Family Case Management Program and other community-based programs that function as alternatives to detention. It does not, however, end mandatory detention, end the use of private prisons, or end family detention.

**Second**, the USCA would provide **appointed counsel** to represent certain groups of “vulnerable” immigrants in their removal proceedings, including:

- All children;
- All people with a disability;
- All victims of abuse, torture, and violence;
- All pregnant or lactating women;
- All parents of U.S. citizen children.

Currently, there is no recognized right to government appointed counsel, and immigrants who cannot afford counsel must represent themselves. This is so despite the fact that ICE has a specialist attorney representing its interests in every removal proceeding, and despite compelling evidence that having an attorney is the single most important factor in whether a person in removal proceedings wins or loses her case. This provision represents an important step in the right direction, although it falls short of the goal of universal representation in immigration proceedings.

**Third**, the USCA would restore immigration judges’ discretion and permit them to grant relief and/or bond in compelling cases where relief or bond were previously barred by mandatory deportation and mandatory detention provisions.

**Fourth**, the USCA would require Immigration and Customs Enforcement (ICE) to give any immigrant going through removal proceedings a copy of the evidence that ICE has and plans to

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<sup>1</sup> Publication of the National Immigration Project of the National Lawyers Guild (NIPNLG), 2020. This primer is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). It provides a summary of the provisions of the bill as of February 19, 2021, and does not account for any future amendments. For questions about this primer or the Biden bill, you can contact Caitlin Bellis at [cbellis@nipnlg.org](mailto:cbellis@nipnlg.org).

use against them. Currently, in most immigration courts, an immigrant must file a Freedom of Information Act request, which can take months to be produced, to see such evidence.

**Fifth**, the USCA would instruct the Department of Justice to hire additional immigration judges and members of the Board of Immigration Appeals and ensure those hired had experience in immigration law and received training on providing fair hearings. The USCA would also instruct DOJ to hire an equal number of immigration judges and Board members from the private, nonprofit, and academic sectors. Currently, the vast majority of immigration judges are former ICE attorneys.

**Finally**, the USCA would encourage electronic case management and e-filing reforms. Currently, almost all immigration court documents must be filed in paper, hard copy form.