

On October 20, 2023, the White House sent a [request](#) for supplemental funding to Congress. The request furthers an enforcement-centric approach to border and migration policy that exacerbates rather than addresses the humanitarian challenges facing migrant communities and the organizations and localities providing them with respite and services. NIJC encourages Congress to reject the vast amount of funds sought for Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) that would be used to further fuel rapid deportations, detention, and harmful border externalizing programs, and to support funding for additional processing and humanitarian services.

This document provides analysis and recommendations on the immigration-related provisions of the White House's request. These recommendations are aligned with the [guiding framework](#) NIJC and numerous other organizations continue to encourage Members of Congress to follow when considering immigration- and border-related funding requests.

- NIJC urges Congress to **reject** the following: 1) the requested \$2.5 billion for ICE that would be used to expand the abusive immigration detention system; 2) the aspects of the proposed \$4.47 billion for CBP operations that would be used for detention, surveillance, rapid removals, and other harmful enforcement measures; 3) the funds requested for foreign aid to be used by governments to carry out deportations at the behest of the United States; 4) requested funds for the Family Expedited Removal Management (FERM) program a fast-track deportation and surveillance program that deprives immigrant families of due process; and 5) The administration's request to grant DHS authority to utilize funds to facilitate "voluntary returns," in which people are often coerced to give up their rights and return to danger; and 6) requested funds for "community based residential facilities" and DHS temporary housing facilities.
- NIJC encourages Congress to **support**: 7) the additional requested funds for the Shelter and Services Program (SSP) (with enhanced oversight); 8) additional funds for Health and Human Services (HHS) for supporting people entering the United States under existing parole programs and unaccompanied children; 9) funds for U.S. Citizenship and Immigration Services (USCIS) for asylum and other benefits processing and adjudications; and 10) additional funds for legal access programming and representation for people facing removal and immigration court proceedings.

The document ends with a list of the components of the supplemental request that relate to immigration policy. ([Read NIJC's analysis of the August 2023 White House supplemental funding request.](#))

1. Reject the requested \$2.5 billion for ICE that would be used to drastically expand the immigration detention system.

Since the Biden administration [signaled intent to increase its use of detention](#) and other punitive programs in May 2023, ICE's use of detention for people arriving to seek asylum in the United States has [dramatically increased](#). Today, there are over [36 thousand](#) people in ICE detention. The White House request for more funds for detention would only fuel a system plagued with "[barbaric and negligent conditions](#)" that includes discriminatory and racist abuse, punitive use of solitary confinement, physical and sexual abuse, and medical neglect resulting in death. It is alarming to see the administration continue to request funding to use carceral settings to detain immigrants during their asylum and immigration court cases.

Today, ICE is detaining more people than they are currently funded to detain. Continuing to grow the immigration detention system is reckless in light of persistent documented abuses and evidence showing people voluntarily appear for their hearings at rates of nearly 100% when provided social services and legal support.

Congress should reject the request for funds to further expand ICE's bloated and harmful detention system.

2. Reject the requested \$4.47 billion for CBP detention and militarization programs.

Given the administration's disproportionate focus on border militarization and long-standing history of impunity for abuses carried out by U.S. Border Patrol, Congress should oppose funding for additional border patrol agents and CBP detention. [DHS says](#) it plans to use the requested funds to "expedite the removal process and deliver tougher consequences under Title 8 for those who do not have a legal basis to remain." This continued deterrence-oriented approach to migration management is harmful and misguided.

The Biden administration must shift away from a [border management](#) approach that relies on administering punitive "[consequences](#)" to prevent future border crossing attempts. This approach does not work — historic migration [trends](#) show that attempts to prevent immigration through [prosecutions and other punitive measures](#) do not actually drive down migration numbers and instead serve only to increase deaths and peril to those fleeing harm.

Funds under this section are also sought to reimburse the Department of Defense for "support on the Southwest border." Deploying military personnel and resources to the border for civil enforcement purposes is harmful for migrants, border communities, and U.S. democracy. Proposals to expel or block those seeking protection, further militarize the border, or detain more people will make the process crueler, and will have little impact on the numbers arriving to our shores.

Congress should reject additional funds for CBP detention, surveillance and enforcement operations, and for reimbursement of the misguided and harmful use of military resources for civilian operations at the border.

3. Reject funds requested for foreign aid to be used by governments to carry out deportations as part of U.S. border externalization.

On September 29, 2023, Axios [reported](#) that the Biden administration planned to direct up to \$10 million in foreign aid for a pilot program for the Panamanian government to deport more migrants who are trying to reach the United States. The aim, according to Axios, is to stop migrants long before they reach the U.S.-Mexico border. Members of Congress quickly issued [statements](#) opposing the announced effort by the Biden administration to use foreign assistance funding to assist Panama with deportations.

The rapid action on a controversial plan illustrates the administration's attempts to curb the number of people arriving at the border through offshoring programs. While this proposal is unprecedented, past programs that sought to [externalize the U.S. border enforcement policies](#) and block asylum seekers from reaching their destination have had [devastating consequences](#). Even with funding for training and other safeguards in place, there is no way for the United States to rely on other state actors to ensure compliance with international obligations to those seeking refuge from persecution and political violence.

Refugee groups have also [documented](#) that countries such as Panama do not have capacity to assess protection needs of individuals transiting through the country consistent with its international obligations.

Congress should oppose any requested funds for foreign countries to carry out deportations of migrants at the behest of the United States.

4. Reject requested funds for the FERM program, a fast-track deportation and surveillance program that deprives immigrant families of due process.

The DHS [fact sheet](#) on the supplemental funding request indicates that funds requested are needed to “expedite the removal process and deliver tougher consequences under” for those determined to not have a legal basis to remain, including by increasing “removal flights and resources for Alternatives to Detention in part to enable our Family Expedited Removal Management, or FERM, program.” NIJC is strongly opposed to funding for the [FERM program](#), a nascent program that ICE is rolling out at a breakneck pace, wherein families arriving at the border to seek asylum are placed under onerous surveillance measures and rushed through fast tracked asylum proceedings largely without counsel. This program, in practice, is short-circuiting families’ access to attorneys, fairness, and a meaningful opportunity to pursue asylum.

We strongly urge Congress to reject any additional funds for the FERM program that deprives immigrant families of fundamental due process rights.

5. Reject the administration’s request to grant DHS authority to utilize funds to facilitate “voluntary returns,” in which people are often coerced to give up their rights and return to danger.

The Biden administration’s post-Title 42 border policy includes an alarming practice wherein DHS officials pressure people to abandon their claim to asylum and agree to return to Mexico or their home

country in order to avoid the consequences that would follow if their claim is denied. The White House's request includes proposed language that would authorize ICE and CBP to use funds appropriated by Congress to continue this practice, which they refer to as "voluntary returns." Reports from NIJC clients and others who have made the decision to accept a so-called "voluntary return" suggest that government officials are regularly pressuring people to agree to return prior to even presenting their fear of return, and often under coercive conditions. Further, the vast majority (and likely nearly 100 percent) of those making the "voluntary return" decision are doing so without any opportunity to consult with counsel to understand the viability of their asylum claim or the legal consequences of the return.

We urge Congress to reject any proposal that endorses the administration's "voluntary return" program at the border and/or in CBP custody.

6. Reject requested funds for "community based residential facilities" and DHS temporary housing facilities.

The White House's request includes funds for new "non-custodial housing options for noncitizens in expedited removal," which includes the use of "community-based residential centers" and flexibility for DHS to fund "temporary housing facilities" and services to facilitate deportations. The proposal as it is publicly described lacks in detail, but appears to describe facilities with co-located government services that would not allow freedom of movement except for certain hours decided upon by DHS.

NIJC and partner organizations have long [encouraged](#) a new approach to border processing infrastructure including reception centers run by civil society. However, we have cautioned that such facilities should never be operated or controlled by an enforcement agency such as ICE or CBP, and that freedom of movement should never be restricted for people residing in the facility. It is concerning to see the administration turning to a promising model but subverting it by abandoning key best practices. The administration's proposal appears to be a back-door way to reinstate the use of [family detention](#) without the oversight mechanisms guaranteed by the [Flores settlement](#), which provides minimal standards of treatment for detained immigrant children.

We urge Congress to reject this proposal and work with the administration to support the development of a new approach to border processing that follows the principles [recommended](#) by experts.

7. Support additional funds for the Shelter and Services Program, while encouraging the administration to move this program out of CBP's purview.

The White House is requesting an additional \$1.4 billion for FEMA for the Shelter and Services Program (SSP), a grant-based program that funds local governments and nongovernmental organizations providing respite and services to people recently arrived at the southwest border.

Robust funding for civil society and local government to address the needs of people arriving at the border to seek safety is a central component of a humane approach to orderly border policy. Localities and non-governmental organizations alike continue to provide a dignified welcome to people seeking safety in our communities, without adequate funds or support from the federal government.

We encourage Congress to increase funding for SSP, while continuing to express concerns that the funds are currently routed through CBP given that agency's track record of misusing humanitarian funds. We further encourage Congress to provide rigorous oversight of SSP to ensure that problems with the distribution and coordination of funds are immediately addressed.

8. Support additional funds for the Department of Health and Human Services (HHS) for people eligible for parole programs and for unaccompanied children.

The White House has requested \$1.85 billion for HHS's Office of Refugee Resettlement to support unaccompanied children, Cuban, and Haitian nationals arriving through existing parole programs, and other populations who are eligible for refugee resettlement services. The funding request also seeks \$481 million specifically for services and support for Ukrainians entering the United States through the Uniting for Ukraine program, along with extended authorization for continued benefits for the program.

Robustly funding support services for case management, social services, cash assistance, and other support for new arrivals as they integrate into their new communities is integral to the United States' commitment to the international refugee protection regime. Regardless of nationality, all people must have their basic needs met in order to thrive and flourish in a new home. This is especially true for those fleeing conflict and trauma, and for children forced to leave their families to find safety.

We encourage Congress to robustly fund the Office of Refugee Resettlement and to ensure that those arriving in the United States through an existing parole program are authorized to receive the support and services they need to survive and thrive.

9. Support additional funds for USCIS asylum processing and adjudication needs.

The supplemental funding request seeks \$755 million for USCIS, funds that are needed for additional asylum officers, immigration services officers, and to address the crippling backlog facing those applying for employment authorization and other benefits.

For too long, Congress has expected USCIS to function largely as a fee-funded agency. The agency is now facing multiple layers of bureaucratic crises, as people seeking employment authorization, asylum, and other benefits wait months or years for adjudications. The Asylum Office corps is particularly in need of additional support and funding, especially given the unique training needs required for asylum officers to properly approach interviewing through a trauma-informed lens.

We encourage Congress to robustly fund USCIS to meaningfully address backlog reduction and ensure sufficient staffing for asylum and other benefits adjudications.

10. Support additional funds for legal access programming and representation for people facing removal and immigration court proceedings.

The White House has requested \$1.4 billion to bring 375 new immigration judge teams to the Executive Office for Immigration Review (EOIR), which houses the United States' immigration courts, and to "support the legal access program for two years." The immigration courts have long suffered under a

crisis of due process and fundamental rights, with the vast majority of people facing an immigration judge opposite a federally funded prosecutor without a lawyer. There is no right to appointed counsel in immigration court, as there is for those facing criminal charges.

EOIR's Office of Legal Access Programs oversees the Legal Orientation Program, a critical safety net program that provides know-your-rights programming to unrepresented individuals facing court proceedings, including a program specifically focused on those representing themselves while in ICE detention. These programs are dramatically under-funded, leaving non-profit legal service providers to reach only a fraction of those in need of legal assistance.

We encourage Congress to increase funding for the Legal Orientation Programs including the detained orientation program and the Immigration Court Helpdesk and related programs, and to support the development of an appointed counsel program for indigent immigrants facing removal.

Summary of the immigration-related provisions in the October 2023 White House supplemental funding request

U.S. Immigration and Customs Enforcement (ICE) Operations and Support

- \$2.5 billion (\$759 million higher than the August supplemental request).
- Funds would be used to “provide additional resources for immigration enforcement, detention, transportation, and removal, as well as funding for counter fentanyl activities.”
- Just in recent months, ICE detention levels have risen to nearly 36,000 people detained in jails and privately operated facilities across the country. The new funding would allow for ICE to expand the detention apparatus to hold thousands more in immigration detention.

U.S. Customs and Border Protection (CBP) Operations and Support

- \$4.47 billion for CBP operations and \$849 million for construction (\$1.76 billion higher than the August supplemental request).
- This would fund an additional 1,300 Border Patrol Agents in addition to the 20,205 agents funded in the FY2024 Budget, and 1,000 CBP Officers with a focus on counter-fentanyl.
- The funding will also include 300 Border Patrol Processing Coordinators and support staff.
- The [DHS fact-sheet](#) notes that the administration will use these funds to continue to use the expedited removal process and deliver “tougher consequences” for those who do not have a legal basis to remain.
- The funds include additional \$1.4 billion for the SSP program for grants to local governments and nonprofits for temporary food, shelter, and other services for recently arrived migrants.

U.S. Citizenship and Immigration Services (USCIS) Operations and Support

- \$755 million for USCIS (not included in the August supplemental request).

- The White House request says this is “to hire additional asylum officers, immigration services officers, and support staff to respond to an increase in defensive asylum workload and address the backlog in processing employment authorization and immigration benefit applications.”
- This includes hiring 1,600 asylum officers, and 30 new USCIS officers to speed up the issuance of work authorization documents for eligible noncitizens.

DHS Management Directorate Operations and Support

- \$61 million for DHS management directorate for biometric technology systems (included in August supplemental request).
- Funds would “enable DHS to continue to provide biometric data services to interagency partners as well as execute and enforce existing immigration laws.”

Justice Operations, Management, and Accountability Executive Office for Immigration Review (EOIR)

- \$1.42 billion for EOIR (\$36 million higher than the August supplemental request).
- The White House request says this will be used for “additional immigration judge teams, support the legal access program for two years, and support EOIR’s United States Digital Service partnership to automate court operations and increase case resolution rates.”
- The DHS fact-sheet explains that this includes “1,470 additional attorneys and support staff to match the 375 new immigration judge teams to adjudicate and process immigration cases more quickly and help reduce the caseload backlog.”

State, Foreign Operations, and Related Programs Department of State and U.S. Agency for International Development (USAID)

- \$1.30 billion for the Department of State (DOS) and USAID to fund diplomacy to reduce migration (\$976 million higher than the August supplemental request).
- \$50 million of this would be for Diplomatic Programs to “support safe, orderly, and humane migration in the hemisphere; and support efforts in the region to reduce irregular encounters in the U.S. Southwest border.”
- \$850 million for Migration and Refugee Assistance to “to address humanitarian needs in the Western Hemisphere to promote access to regular pathways to migration and international protection, including support for integration and regularization.”
- \$400 million for economic support fund, to support “safe, orderly, and humane migration in the hemisphere and support efforts in the region to reduce irregular encounters at the U.S. Southwest border.”
- This would [include](#) funding for “third countries to conduct their own repatriation flights,” in order to restrict migrants trying to reach the United States.
- DHS is also requesting new authority to “provide assistance to foreign countries to conduct these repatriations,” upon approval by DHS and DOS Secretaries.

Labor, Health and Human Services (HHS), Education Department Health and Human Services

- \$1.85 billion for HHS (not included in the August supplemental request)
- This funding would be used to support Cuban and Haitian Entrants arriving in the United States through the “provision of time-limited cash and medical assistance and community-based services.”
- Funds would also be used to support unaccompanied children and other Office of Refugee Resettlement-eligible populations.

CJS, Federal Bureau of Investigation Salaries and Expenses

- \$204 million for FBI (not included in the August supplemental request).
- Funds used to address backlogged DNA samples taken at the border.

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