

Removal Defense Program Administration 101

March 2023 | Fact sheet

Introduction

More than 2 million people living in the United States are currently facing removal from the country in immigration court, and millions more are at risk of being placed in removal proceedings at any time.¹ Despite the complexity of immigration law and the devastating consequences of deportation, and unlike in the criminal legal system, people facing removal do not have a legal right to representation at government expense if they are unable to afford it themselves.² As a result, more than 1 million people are currently facing deportation without legal representation in the immigration court system.³ Many more face removal without ever setting foot in an immigration court, and the U.S. Department of Homeland Security (DHS) reported nearly 240,000 total removals in FY 2020, most likely done without representation for the people being removed.⁴

The Need for Removal Defense Program Administration

In recent years, state and local governments and private philanthropies have partnered with legal service providers and community-based organizations to establish a growing network of legal representation programs for people facing removal, augmenting the limited removal defense that is funded by the federal government. Many of these programs include one or more **program administrators** to implement, manage, and oversee day-to-day program operations. As the need for removal defense representation continues to grow, removal defense program administration will be critical to building sustainable representation capacity, enhancing the quality of representation, and achieving the best outcomes possible for people facing removal.

A Values Framework for Program Administration

Even though program administration does not involve direct representation of people in removal proceedings, the way a removal defense program administrator approaches their work can profoundly affect the program, its providers, and the people it serves. Even seemingly routine parts of program administration—like issuing payments to providers and collecting program data—can be done in ways that strengthen the program and facilitate better case outcomes. Rooting program administration in a set of core values can help guide a program's long-term strategy and daily operations toward the overarching goal of providing and increasing high-quality removal defense representation.

Although every program and program administrator is different, the following values have guided the Vera Institute of Justice's (Vera's) administration of removal defense programs.

1. Universal

Removal defense representation should be **universal**. Every person facing removal should have access to high-quality representation, regardless of the perceived deservingness of the client or merits of their case. While all current removal defense programs face legal and jurisdictional restrictions on eligibility and may not yet be sufficiently funded to serve everyone who needs them, program administrators can help design and open programs to as many people as possible and, in some cases, help make the case to expand programs toward universality.

2. High quality

Removal defense representation must be **high quality**, and representatives must have the resources necessary to hold the government to its burden and present the fullest possible defense in every case. Representation should begin as early as possible, continue over the life of the case until it reaches a final outcome, and cover the full scope of work necessary for a zealous, holistic defense. Program administrators are well positioned to responsibly allocate program resources in a way that facilitates high-quality representation for all people served by the program.

3. Equitable

Removal defense representation should be **equitable**. Given the systemic inequities in the immigration enforcement system and the criminal legal system that feeds it, programs should not exclude anyone based on prior contact with the criminal legal system or the perceived merits of their defense. Program design and implementation should promote equal access to representation for all eligible people and ensure that resources are invested and distributed in a manner consistent with the need to ensure high-quality and linguistically appropriate representation for everybody. Program administrators should also develop mechanisms to engage with and implement feedback from the people most affected by immigration enforcement and helped by removal defense programs.

4. Sustainable and scalable

Program administration is key to building removal defense programs that are **sustainable and scalable**. Given the large and increasing need for high-quality removal defense, program administrators can design and implement programs that help providers maintain staff and responsibly grow representation capacity to meet the needs of the clients and communities they serve.

5. Independence

Finally, by helping to delineate and reinforce the best-fit roles of all program stakeholders, program administration can facilitate **independence** by creating conditions under which legal service providers can focus solely on providing high-quality representation for their clients.

What Does a Program Administrator Do?

The scope of program administration work can vary depending on the program parameters, funding, complexity, and other factors. The non-exhaustive list below gives some examples of common program administrator responsibilities, although not every program administrator performs all of these roles.

- Identifying, selecting, and subcontracting providers
 - This process includes designing and issuing proposal requests, evaluating submissions and selecting providers, negotiating budgets, and executing subcontracts.
 - Some programs use provider selection review committees that include a cross-section of important stakeholders, including community-based organizations and advocates.
 - Provider identification and selection is a critical first step in ensuring high-quality representation and equitably distributing program resources. It is also important for creating sustainable and scalable programs, as it offers an opportunity to work with providers on proposals that have manageable caseloads and allow for growth.
- Monitoring contract compliance and progress
 - This process involves creating or reviewing program policies and procedures; tracking progress toward program deliverables; and managing client intake, referral, and transfer streams.
 - Program administrators can help ensure that policies and procedures are crafted and implemented equitably and that those relating to case intake, referral, and transfer promote universality to the extent possible. And by tracking progress toward program deliverables, administrators can help determine whether those deliverables promote a sustainable and scalable program.
- Budgeting, making payments, and issuing reimbursements
 - This may include monitoring the overall program budget and, where applicable, provider budgets; issuing regular payments to providers; and reimbursing providers and other subcontractors for services related to representation, such as language interpretation, expert witnesses, and supportive representation provided by specialist counsel.
 - Responsible budgeting and prompt payment to subcontractors are critical to building a sustainable and scalable representation system. The accessibility and distribution of resources among providers and/or service areas can also promote equity, ensuring all providers have the resources they need to provide high-quality representation to program clients.

- Collecting data to understand program operations
 - The program administrator’s role in collecting data will vary depending on the scope of their responsibilities. Some data collection is typically required to understand and oversee day-to-day program operations and report to funders. This can be done by collecting and analyzing quantitative and/or qualitative data in a way that is minimally burdensome to providers and does not include any personally identifiable information. If the program administrator’s role includes evaluating the program in addition to administering it, then sufficient resources, including research staff and a robust data infrastructure, are required.
 - Collecting program data can help ensure that representation is high quality, for example, by looking at different dimensions of case activity. Program-level information can also enhance understanding of attorney caseloads and case times, and matters litigated in cases can help calibrate program capacity to ensure it is sustainable and scalable.

- Communicating with stakeholders
 - Program administrators often serve as the primary point of contact between providers and program funders, giving them a unique vantage point from which to elevate and resolve issues affecting representation.
 - Program administrators convene regular check-ins with providers and often conduct in-person or virtual site visits. Some program administrators work to facilitate community awareness and engagement with the program, and others facilitate advisory boards or oversight committees.
 - Program administrators who serve as the primary point of contact between providers and funders help ensure that legal representatives have the independence and resources necessary to focus on providing high-quality representation to their clients. Program administrators can also help guide programs toward true universality and promote equity by, for example, making the funder aware of the need for and gaps in program service in the community, as well as by helping to promote awareness of the program within the communities it seeks to help.

- Training and technical support
 - Training and technical support are key to growing program capacity and achieving better outcomes. Program administrators can be ideally situated to identify providers’ training and technical support needs and either provide them directly or contract with others who can.
 - Providing technical support can take various forms, from hosting calls to establishing listservs to subcontracting with trainers.
 - Technical support can also take the form of facilitating access to services related to representation, such as expert witnesses, interpretation and translation, and social services.

- Training and technical support are critical to providing high-quality representation. They can also promote universality and equity by, for example, equipping removal defense attorneys with the skills needed to effectively represent people in removal proceedings who are affected by the criminal legal system. And they can promote a sustainable and scalable system by ensuring providers have the knowledge and skills they need to achieve positive outcomes, helping reduce burnout and increase long-term job satisfaction.

Who Are the Stakeholders Involved in Removal Defense Programs?

Current removal defense program administrators include nonprofit organizations—such as Vera—legal service providers (LSPs), and government agencies. In some cases, government agencies or private funders directly administer removal defense programs, which eliminates a layer of bureaucracy but also risks inappropriate interference by the funder in case-level decisions that are best left to LSPs. In other cases, removal defense LSPs administer the programs. This model can promote high-quality representation but risks conflicts with other LSPs in the program who may be competing with the program administrator LSP for cases, funding, or other resources. Another model relies on neutral third-party organizations to administer programs on behalf of the funder. Although this model helps support and reinforce the optimal roles for funders and LSPs and is Vera’s recommended approach, third-party program administration may not be available or feasible in all cases.

Although different types of organizations can be effective program administrators, those interested in starting program administration work should consider whether they are truly committed and equipped to take it on. The qualities below are among those that Vera has found to be critical to strong program administration:

- **Commitment to a values framework aimed at providing universal, high-quality, equitable, sustainable, and independent representation.** The way a removal defense program administrator approaches their work can profoundly affect the program, its providers, and the people it serves. Rooting program administration in a set of core values can help guide a program’s long-term strategy and daily operations toward the overarching goal of providing and increasing high-quality removal defense representation.
- **Organizational commitment to program administration.** Administrators should be firmly committed to fully staffing, resourcing, and supporting their program administration work, even if only engaging in program administration on a limited basis. If the program administrator is an LSP who is also providing representation under the program, special care should be taken to separate the program administration and representation pieces of the work as much as possible to avoid conflicts and retain the confidence of other program LSPs.

- **Alignment with the program’s values and goals.** A program administrator does not have to agree with every detail of the program it administers, but it should be aligned with the program’s underlying values and ultimate goals so that all parties are working toward the same outcomes.
- **Strong organizational reputation.** Ideally, program administrators will have a strong reputation among program providers and the broader community in removal defense, program administration, or both.
- **Attentiveness to local differences and needs.** Removal defense practice can vary significantly depending on the courts, detention facilities, and populations served, even within small geographic areas. Program administrators should be or become familiar with these local dynamics and needs and develop supports that can help tailor programs to these unique needs.
- **Related experience and capability.** Prior program administration experience isn’t required to be a strong program administrator; many other organizational capabilities can be applied to program administration. Transferrable experience includes requesting and reviewing proposals, selecting providers, and negotiating budgets and deliverables with funders and providers.

What Resources Do Removal Defense Program Administrators Need?

Effective program administration requires a committed funder willing to financially invest in program administration and an organization that is similarly committed to removal defense and willing to make an organizational investment in program administration. Funders should be prepared to invest a portion of the overall program budget in program administration, although the exact amount will depend on a variety of factors, including the following:

- **Total amount of program funding.** Not all removal defense programs have funding sufficient to ensure both high-quality representation of clients and robust program administration. Although it is sometimes possible to find supplemental funding to support a program’s operational needs, programs with limited operational funding may choose to reconsider the scope of the program administrator’s role and reassess that scope as the program expands.
- **Number of subcontractors.** Programs with relatively few subcontractors or clients may be able to devote a smaller portion of the budget to program administration, whereas those with large subcontractor networks or caseloads may require more investment.
- **Scope of responsibilities.** Program administrators taking on more of the functions listed above will require more resources to carry out those functions effectively.

- **Costs associated with launching a new program.** New or transitioning programs may require higher initial program administration investments than established programs.

At a minimum, an investment in program administration should include the following:

- **Staff time.** The program administrator should have enough funding to enable key staff to be fully dedicated to program administration. If the program administrator is also an LSP providing representation under the program, this may mean adding more staff or shifting roles to ensure separation between the administration and representation functions.
- **Data collection capacity.** Most removal defense programs require at least some level of reporting for day-to-day program administration and can use existing case management systems or track information in a spreadsheet, among other methods of collecting and storing information. Where the program administrator's role includes program evaluation, programs must make a larger investment in data collection infrastructure, including research staff and contracting with a vendor to build and maintain a database to systematically collect data, analyze and interpret data, and make evidence-based recommendations.

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For more information

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The Vera Institute of Justice is powered by hundreds of advocates, researchers, and policy experts working to transform the criminal legal and immigration systems until they're fair for all. Founded in 1961 to advocate for alternatives to money bail in New York City, Vera is now a national organization that partners with impacted communities and government leaders for change. We develop just, antiracist solutions so that money doesn't determine freedom; fewer people are in jails, prisons, and immigration detention; and everyone is treated with dignity. Vera's headquarters is in Brooklyn, New York, with offices in Washington, DC; New Orleans; and Los Angeles. For more information, visit vera.org.

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Endnotes

¹ Data includes deportation cases with Notices to Appear dated from October 2000 through December 2022, extracted from TRAC Immigration data by Vera. TRAC Immigration, “New Deportation Proceedings Filed in Immigration Court,” database, accessed February 7, 2023. To reach the total number of deportation cases with Notices to Appear, set “Case Group” to “Deportation Cases” and choose the “Outcome” filter in Column 1. This results in 2,043,449 immigration court cases labeled “Pending” as of December 2022. The U.S. Census Bureau’s 2021 American Community Survey estimates more than 21 million noncitizens in the United States, all of whom are potentially at risk of removal. U.S. Census Bureau, *2021 American Community Survey, 1-Year Estimates Data Profiles: Selected Social Characteristics in the United States* (Washington, DC: U.S. Census Bureau, 2021), Table DP02, <https://data.census.gov/table?t=Native+and+Foreign+Born&tid=ACSDP1Y2021.DP02>.

² The only current exception to this is for people in removal proceedings who are detained in DHS custody and found incompetent to represent themselves due to a serious mental illness or intellectual disability. See ACLU Southern California, “*Franco v. Holder*,” accessed March 3, 2023, <https://www.aclusocal.org/en/cases/franco-v-holder>.

³ Data includes deportation cases with Notices to Appear dated from October 2000 through December 2022, extracted by Vera. TRAC Immigration, “New Deportation Proceedings,” accessed February 7, 2023. To reach the total number of deportation cases with Notices to Appear, set the “Case Group” to “Deportation Cases,” choose the “Outcome” filter in Column 1, and select “Pending.” Then choose the “Represented” filter in Column 2. This results in 1,195,448 cases in the “Not Represented” row, which is the total count of pending unrepresented immigration court cases as of December 2022.

⁴ Office of Immigration Statistics, *2020 Yearbook of Immigration Statistics* (Washington, DC: DHS, 2022), Table 39, 103, <https://perma.cc/BHQ2-QACD>.