

# Access to Justice in the Age of COVID-19

A ROUNDTABLE REPORT  
SEPTEMBER 2021

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LEGAL AID INTERAGENCY ROUNDTABLE

*“This Nation was founded on the ideal of equal justice under the law. Everyone in this country should be able to vindicate their rights and avail themselves of the protections that our laws afford on equal footing. Whether we realize this ideal hinges on the extent to which everyone in the United States has meaningful access to our legal system. Legal services are crucial to the fair and effective administration of our laws and public programs, and the stability of our society...*

*The coronavirus disease 2019 (COVID-19) pandemic has further exposed and exacerbated inequities in our justice system, as courts and legal service providers have been forced to curtail in-person operations, often without the resources or technology to offer remote-access or other safe alternatives. These access limitations have compounded the effects of other harms wrought by the pandemic. These problems have touched the lives of many persons in this country, particularly low-income people and people of color.*

*With these immense and urgent challenges comes the opportunity to strengthen Access to Justice in the 21st century. Through funding, interagency collaboration, and strategic partnerships, the Federal Government can drive development of new approaches and best practices that provide meaningful access to justice today, and into the future, consistent with our foundational ideal of equal justice under the law.”*



PRESIDENT JOSEPH R. BIDEN

Memorandum on Restoring the Department of Justice’s Access-to-Justice Function  
and Reinvigorating the White House Legal Aid Interagency Roundtable

May 18, 2021

**ROUNDTABLE  
MEMBERS:**

U.S. Department of State (State)  
U.S. Department of the Treasury (Treasury)  
U.S. Department of Defense (DOD)  
U.S. Department of Justice (DOJ)  
U.S. Department of the Interior (DOI)  
U.S. Department of Agriculture (USDA)  
U.S. Department of Labor (DOL)  
U.S. Department of Health and Human Services (HHS)  
U.S. Department of Housing and Urban Development (HUD)  
U.S. Department of Transportation (DOT)  
U.S. Department of Education (ED)  
U.S. Department of Veterans Affairs (VA)  
U.S. Department of Homeland Security (DHS)  
U.S. Environmental Protection Agency (EPA)  
Equal Employment Opportunity Commission (EEOC)  
Corporation for National and Community Service (CNCS)  
Office of Management and Budget (OMB)  
U.S. Agency for International Development (USAID)  
Administrative Conference of the United States (ACUS)  
National Science Foundation (NSF)  
U.S. Digital Service (USDS)  
Domestic Policy Council (DPC)  
Office of the Vice President (OVP)  
Consumer Financial Protection Bureau (CFPB)  
Federal Communications Commission (FCC)  
Federal Trade Commission (FTC)  
Legal Services Corporation (LSC)  
Social Security Administration (SSA)

# LETTER FROM THE CO-CHAIRS

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Dear Mr. President:

Under your leadership, this Administration is committed to advancing equity and equal opportunity for all. As you have made clear since Day One, this requires both ambitious and creative policy, and an unrelenting, government-wide focus on translating that policy into real impact.

A critical part of this focus is the May 18, 2021 Presidential Memorandum on Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable (Roundtable). The Memorandum recognizes that we must constantly strive to ensure that everyone in this country is able to vindicate their rights and avail themselves of the protections and benefits our laws afford, on equal footing. This highlights our nation's urgent need for a modernized justice delivery system that is accessible to all and for innovative and collaborative approaches across government to ensure the effectiveness of Federal relief efforts. You called upon an unprecedented number of agencies to unite in a government-wide approach to advancing these goals. We are honored to lead this effort as Co-Chairs of the re-invigorated Roundtable.

In response to your directive that the Roundtable first examine the devastating impacts of the COVID-19 pandemic on access to justice in the civil and criminal legal systems, we present you with the enclosed report. It discusses the manifold ways in which the pandemic compounded existing equity gaps. It describes how the pandemic made more widespread and more acute the life-changing events that people too often face without adequate legal

help—like evictions, workplace discrimination, domestic violence, and incarceration. And it explores how, as courtrooms and non-profits were forced to curtail operations, our justice system struggled to meet the public’s needs, which interfered with countless programs intended to help the country respond and recover.

And yet, this report also captures multiple areas of promise, including the novel efforts agencies undertook to address urgent needs and to help our legal systems bounce back. Agencies across the Federal Government marshalled funding, forged partnerships, and launched initiatives in order to provide access to programs and the courts amidst unpredictable circumstances. These efforts are inspiring and hold lessons the Federal Government can use to help build back an improved and crisis-resilient justice system that meets the demands of the twenty-first century. This report thus serves as an important inflection point at which we take stock of the pandemic’s toll on access to justice and frame our agenda going forward.

The pandemic has provided a new sense of urgency and purpose for the Roundtable to meaningfully address the justice gap and make Federal resources more accessible. Thank you for prioritizing this work, and for setting this high bar for your Administration. It is an honor to lead this initiative on your behalf and to submit this report to you.

Dana Remus  
WHITE HOUSE COUNSEL

Merrick B. Garland  
ATTORNEY GENERAL

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“Making real the promise of equal justice under law was the founding principle of the Department of Justice and is the mission for which it must always stand. Because we do not yet have equal access to justice in America, the task before us is urgent. It will require innovation, collaboration, and leadership across all levels of government and beyond, in the spirit of common purpose that has defined the very best initiatives in our country’s history.”

**ATTORNEY GENERAL MERRICK B. GARLAND**

“As we continue to face the challenges of COVID-19, it is more important than ever to ensure meaningful access to the legal system. Securing access to lawyers and the courts is essential for addressing the many convergent crises of the pandemic—including the threat of evictions, job loss, poverty, and domestic violence. All across the country, legal service providers and other public servants on the front lines are leading this work and helping people find a way through some of the hardest times in life. We must support those efforts by finding innovative, pragmatic, and effective strategies to make our legal systems more transparent, accessible, and fair to all.”

**WHITE HOUSE COUNSEL AND ASSISTANT TO THE PRESIDENT  
DANA REMUS**

# I.

## FIRST PRINCIPLES OF THE ROUNDTABLE

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Every individual relies on laws and policies to safeguard their rights and advance public welfare. But the fact that a law or policy is on the books does not automatically translate into impact.

Building codes exist, but buildings are not always up to code. Laws and regulations enshrine worker protections, but employers do not always follow them. Lawmakers enact emergency benefits programs, but bureaucratic hurdles make access difficult for those who need it most. Our Constitution guarantees the right to a fair criminal trial, but not every trial is conducted fairly.

Bridging this disconnect between the promise and reality of our laws often requires a ruling from a judge, appeal of an agency decision, or pursuit of some other legal measure. But not everyone has an attorney or the expertise required to navigate those processes. The right to counsel in civil proceedings is rare, which leaves most people who need a lawyer without one when they stand on the brink of eviction, are the victims of consumer fraud, or are forced to deal with numerous other potentially life-changing events. And while the Constitution guarantees a right to counsel in most cases when someone is charged with a crime, that counsel may not have sufficient time or resources to provide robust representation.



The result is an unmistakable justice gap felt by tens of millions of people who call America home – especially communities of color and low-income communities.

*“When equal access to justice is denied, the effects reverberate beyond courtrooms, and across sectors of society, with risks of children being removed from families, residents losing homes, debt collectors garnishing wages, victims not obtaining safety, or vulnerable people losing freedom. The Roundtable is essential to promote partnership across government to bridge these justice gaps, and to pursue the foundational goal of equal justice for all.”*

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**ASSOCIATE ATTORNEY GENERAL  
VANITA GUPTA**

Access to justice efforts – in their many and growing forms across all sectors of society and levels of government – are a demonstrated and critical part of the solution. The goal of these efforts is to expand the delivery of laws, policies, and programs to serve people’s greatest needs.

This might mean making sure that there are sufficient lawyers and other legal professionals in place to handle the existing case load in courtrooms. It might mean applying technology, simplifying processes, or distributing self-help information to make access easier. And it might mean something as simple as translating a document or form into a language that’s understood by its likely audience.

The bottom line is that access to justice efforts are relevant to ensuring the efficacy of virtually all government and civic initiatives – including relief efforts critical to mitigating the devastating impact of the pandemic. Efforts to address crises through Federal programs, grants, and initiatives are only successful if those resources are actually received by those for whom they were intended. Legal services play a critical role in broadening the accessibility of Federal relief programs and making them accessible to the people who need them most.

Through this initial report and future reports, the Roundtable will demonstrate how access to justice tools and approaches can be used to advance these goals across government.

Long before the pandemic hit, low-income individuals, people of color, people with limited English proficiency, and people with disabilities faced systemic barriers to accessing legal assistance and the courts. The additional and devastating impact of the pandemic, particularly on communities that struggled before the pandemic, cannot be overstated. The death toll and disruption of the pandemic have exacerbated longstanding challenges with housing insecurity, access to employment, medical debt, and access to civil and criminal court systems and government programs.<sup>1</sup>

To help expand the role of the Federal Government in addressing the justice gap, President Biden issued a Presidential Memorandum on May 18, 2021. In it, he distilled the challenges before us in these terms:

*“The coronavirus disease 2019 (COVID-19) pandemic has further exposed and exacerbated inequities in our justice system, as courts and legal service providers have been forced to curtail in-person operations, often without the resources or technology to offer remote-access or other safe alternatives. These access limitations have compounded the effects of other harms wrought by the pandemic. These problems have touched the lives of many persons in this country, particularly low-income people and people of color.”<sup>2</sup>*

To meet these challenges, the President set forth two basic directives.

The first was to reaffirm the role of the Department of Justice as a leader of efforts across government and beyond to secure meaningful access to justice for all. This includes outlining its own plans to expand its access-to-justice function, and to embed its purposes into Departmental operating structure, which are the subject of a separate Attorney General report to the President.

The President’s second directive calls for the White House Counsel and Attorney General to reconvene and reinvigorate the Roundtable.

The White House Domestic Policy Council and the Department of Justice first convened the Roundtable nearly a decade ago to improve outcomes across Federal programs by incorporating civil legal aid. The Roundtable’s early accomplishments prompted President Barack Obama to issue a Presidential Memorandum in September 2015 to elevate the interagency effort as a White House initiative, officially establishing the Roundtable.<sup>3</sup>

*“We can enact the best privileges and protections into law—but we cannot make them real unless people have access to counsel and a fair day in court. This is particularly true for communities that often face disparities in our justice system, including low-income communities and communities of color. The Roundtable will play an integral role in expanding access to justice and exploring ways to assist individuals who are at risk of eviction, job loss, domestic violence, poverty, and other outcomes that could be addressed through timely and affordable access to counsel and the courts.”*

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**DEPUTY WHITE HOUSE COUNSEL  
DANIELLE CONLEY**

The Roundtable examined creative, evidence-based solutions for access to justice and their intersection with Federal program effectiveness. This in turn highlighted the power of access-to-justice interventions in delivering superior outcomes across a wide variety of Federal program areas, including:

- Preventing homelessness and improving access to housing;
- Strengthening family stability;
- Providing clear paths to employment;
- Enhancing public safety and helping crime victims;
- Protecting consumers;
- Improving health care; and

- Meeting the needs of special populations, including veterans and servicemembers; members of Tribal communities; people with disabilities; people with criminal histories; immigrants; and disaster survivors.

The Roundtable's November 2016 Report detailed the many ways that, by adding an access-to-justice focus, agencies were able to advance their missions and enhance program impact.<sup>4</sup>

Ultimately, President Biden's decision to recommission and reinvigorate the Roundtable reflects a commitment to restoring and expanding the government's leadership role and responsibility in advancing access to justice through the power of the Executive Branch. It also reflects this administration's understanding that access to justice is an essential component of effective government policy and service delivery, particularly in addressing major national challenges.

Since its launch, participating agencies have committed to thoughtful and expedient preparation of this report and to developing the Roundtable's agenda, through research, interagency dialogue, collaboration, and stakeholder engagement. For instance, in July, Associate Attorney General Vanita Gupta and Deputy White House Counsel Danielle Conley launched the expanded interagency effort and convened the first meeting of the Roundtable. On August 11, 2021, Second Gentleman Douglas Emhoff, White House Counsel Dana Remus, and Associate Attorney General Vanita Gupta convened a listening session, together with five leaders and 33 administration officials, to discuss access to justice challenges and solutions during the pandemic.<sup>5</sup> The same day, Attorney General Merrick B. Garland and Associate Attorney General Vanita Gupta convened over 35 State Chief Justices to discuss the national housing and eviction disparities, as well as potential solutions.<sup>6</sup>

Our review showed that the Federal Government has helped drive innovations that may hold promise beyond the pandemic. Many of these innovations are still being assessed – and critically, some innovations may have further contributed to the very justice gaps that

they were designed to address. But the creativity involved in expanding access to legal information, self-help services, counsel, and the courts during the pandemic may inspire Federal agencies in preparing for emergency response in the future, while laying the groundwork for broader, more sustainable reforms.

Informed by lessons learned, the Roundtable will continue to expand upon promising models of innovation, critically evaluate shortcomings, and develop justice delivery mechanisms that are more resilient.

## II.

# THE PANDEMIC’S IMPACT ON AMERICAN JUSTICE

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Over the past year, our country has faced multiple challenges, including the worst pandemic in more than one hundred years. Many Americans have been pushed into poverty and lost their homes, their jobs, and even their lives. For many, the impact of COVID-19 was made more acute by the inability to access urgent relief programs because of the longstanding justice gap – which grew worse during the pandemic.

Even before the pandemic, a 2017 Legal Services Corporation (LSC)<sup>7</sup> study showed that 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help, and that 71% of low-income households had experienced at least one civil legal problem in the last year – not only minor or secondary problems, but also issues as crucial as health care, housing conditions, disability benefits, veterans’ benefits, and domestic violence.<sup>8</sup> Notably, this figure only includes civil legal problems that are reported in the first place, which are estimated to represent only about 20% of all civil legal challenges.<sup>9</sup> And a central reason for that lack of reporting ultimately relates to one of the single most important issues in access to justice: most Americans – particularly low and moderate-income Americans – do not recognize when the problems they encounter have potential legal solutions in the first place.<sup>10</sup> While LSC-funded civil legal aid is supplemented by a constellation of other nonprofits, pro bono programs, clinics, and other services, these services nevertheless average out to provide approximately one attorney per ten thousand lower-income Americans.<sup>11</sup>

The pandemic drastically exacerbated the need for legal help and strained the resources that did exist. In a June 2020 LSC survey, Kentucky Legal Aid reported that the number of unemployment claims filed since the start of the pandemic was 3,471% higher than the prior year.<sup>12</sup> Southeast Louisiana Legal Services reported a 670% increase in requests for legal help with unemployment matters and an almost 200% increase in eviction cases.<sup>13</sup> Meanwhile, another LSC survey found that 95% of grantee legal service providers reported a dramatic increase in need for legal assistance with evictions, including “illegal lockouts, utility shutoffs and foreclosures.”<sup>14</sup> The survey also found increased need in the areas of income maintenance and benefits administration – such as problems with the rollout of stimulus checks, unemployment benefits, and consumer debt relief – as well as problems addressing domestic violence.<sup>15</sup>

While the pandemic exacerbated structural inadequacies in the *civil* justice system, it nearly crippled the *criminal* justice system, which was foundationally unprepared for the pandemic’s impact. This is in part because so many criminal justice interactions – from law enforcement to court proceedings to incarceration – involve close physical interaction and little room for delay.

Public defenders reported haphazard or absent safety protocols and crowded court hallways and courtrooms.<sup>16</sup> The disparities of COVID-19 infection rates led to the risk that juries might have decreased representation from a cross-section of the community.<sup>17</sup> Meanwhile, trials were halted and statutory deadlines for indictment were lifted, requiring those incarcerated prior to trial – people who were not convicted of any crime – to choose between a guilty plea or the risk of possible infection in custody.<sup>18</sup> While defense counsel and public defenders across the country had varying policies on remote versus in-person appearances, they reported increased difficulty in adequately representing clients without close in-person contact. Video visits caused severe limitations to discovery review with incarcerated clients.<sup>19</sup> Meanwhile, access to counsel became increasingly difficult as prisons and jails established barriers to legal visitation.<sup>20</sup> Some facilities at times barred legal visitation, resulting in what was effectively a total erosion of the ability for some defendants to communicate with counsel.<sup>21</sup>

Prisons and jails were severely impacted by the virus. Incarcerated people have been infected by the coronavirus at a rate more than five times higher than the nation's overall rate.<sup>22</sup> The inability to socially distance is expected in congregate settings. This limitation was further compounded by issues of overcrowding, insufficient medical care or staff, the overrepresentation of vulnerable populations, and a lack of early access to personal protective equipment and sanitization supplies.<sup>23</sup>

As the pandemic depleted already strained legal services resources, the need for those resources only grew more urgent. As the remainder of this report will illustrate, numerous Federal programs, policies, and initiatives were established or expanded in an effort to address the unique challenges of COVID-19. Yet their success continues to depend on whether they are actually accessible to the communities they are designed to serve.



# III.

## INNOVATIONS

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Over the past 120 days, the Roundtable has surveyed and studied dozens of innovations designed to address the access-to-justice crisis during the COVID-19 pandemic. This review revealed the critical role that access to justice plays in achieving virtually every major programmatic and policy objective salient to COVID-19 recovery – and the need for continued support of access-to-justice work throughout the COVID-19 pandemic and beyond.

### A. INNOVATION STRATEGIES

Our review points towards three categories of innovation for further study and consideration: (1) leveraging Federal funding; (2) advancing evidence-based research and technology; and (3) expanding strategic collaboration.

These strategies build upon the basic approaches that have been developed and tested by the Roundtable and its members over the past decade, which took on elevated relevance during the pandemic.

#### *1. Leveraging Federal Funding*

Federal relief funds offered an important lever for access-to-justice innovation during the pandemic. Specifically, Congress enacted the Coronavirus Aid, Relief, and Economic

Security (CARES) Act,<sup>24</sup> the Consolidated Appropriations Act,<sup>25</sup> and the American Rescue Plan Act (ARPA).<sup>26</sup>

Roundtable departments and agencies, along with other government partners, created and expanded numerous programs to assist individuals facing eviction, foreclosure, job loss, and other harms.

Examples include:

- **The Department of Housing and Urban Development (HUD) disbursed COVID-19-related grant funds, which were administered by states to improve housing stability through civil legal aid.** Many legal aid organizations used state and local disbursements of Coronavirus Relief funds, Community Development Block Grant COVID-19 funds, and Emergency Solutions Grant COVID-19 funds to expand their homelessness and eviction prevention services. For instance, some legal aid organizations launched partnerships with courts to create eviction diversion programs and created tenant right-to-counsel programs.
- **The CARES Act provided \$50 million in supplemental funding to the Legal Services Corporation (LSC) for legal aid to prevent, prepare for, and respond to COVID-19.**<sup>27</sup> By April 20, 2020, LSC had awarded 191 COVID-19 Response grants to its 132 grantees for pandemic-related legal aid.
- **The Small Business Administration (SBA) Paycheck Protection Program supported justice system stakeholders.** Congress created the Paycheck Protection Program to help fund up to eight weeks of payroll costs and benefits, and to help small businesses keep their workforce employed during the pandemic. SBA disbursed Paycheck Protection Program funds to public defender offices and legal aid organizations and providers.

- **The Department of Veterans Affairs (VA) used supplemental ARPA funds to help fund legal services.** The VA’s Supportive Services for Veteran Families Program seeks to help homeless veteran families find housing and avoid homelessness.

## ***2. Expanding Access to Technology and Virtual Services***

Many court systems transitioned to virtual services to allow litigants to resolve legal problems, negotiate settlements, file documents, and conduct hearings remotely.

However, in many cases, the transition to digital services created additional challenges and inequities that frustrated access to legal help and the courts. For example, people in areas of the country without broadband access, computers, or smart phones often struggled to access counsel and the courts *before* the pandemic. The shift to an almost entirely virtual justice delivery system left many of these individuals without access to vital resources and proceedings. Moreover, virtual court appearances and meetings posed significant challenges for the effective representation of clients in criminal proceedings, where witnesses and juries often could not appear in a physical courtroom for trials.

Federal, state, and local government leaders must continue to engage with civil legal aid providers, the criminal defense bar, and policymakers to assess how to make the shift towards digital service delivery more accessible. The Roundtable will continue to explore this issue through its member agencies. Many agencies are starting to explore strategies to elevate what works and mitigate the negative consequences of remote proceedings.

Examples of Federal support for virtual services included:

- **The Administrative Conference of the United States (ACUS) developed access-to-justice recommendations for all virtual Federal agency adjudications.**<sup>28</sup> This collection of recommendations offers best practices to facilitate full and fair access to adjudicative proceedings for historically underserved groups. Recognizing that

video teleconferencing may not be appropriate in all circumstances and must be legally permissible, ACUS identified factors for agencies to consider when determining whether to conduct remote hearings, including “whether [video teleconferencing] can be used without adversely affecting case outcomes or representation of parties” and whether its use “would affect costs, productivity, wait times, or access to justice.”<sup>29</sup>

- **AmeriCorps’ three largest national service programs helped their access-to-justice and legal aid grantees provide virtual legal assistance during the pandemic.**<sup>30</sup> Each of AmeriCorps’ major anti-poverty programs – AmeriCorps State and National, AmeriCorps VISTA, and AmeriCorps Seniors – has provided volunteers to courts and legal aid service providers. AmeriCorps made a number of policy changes, such as clarifying when teleservice is allowed, to enable grantees to prioritize COVID-19 response and adapt their programs to the pandemic.<sup>31</sup> Many court and legal aid grantees – such as Illinois JusticeCorps, Equal Justice Wyoming, and Montana Legal Services Association – took advantage of these policy changes to transition to virtual services.
- **The Equal Employment Opportunity Commission (EEOC) expanded its use of virtual platforms to provide information and facilitate access to the discrimination charge process.** EEOC expanded its use of technology to reach populations in rural and remote areas and to provide training and technical assistance on pandemic-related accommodation requests and requests for information. EEOC also expanded its use of technology to provide continued access to the discrimination charge process and to conduct virtual interviews, mediations, and Federal hearings.
- **The Department of Interior (DOI) funded pilot projects to assess best practices on virtual communication and access to Tribal court hearings.** DOI funded technology improvements for Tribal courts to provide remote hearings and services, many of which may continue after the pandemic in rural and remote areas. DOI

also funded several pilot projects to assess these innovative tools and new communication formats.

- **The Department of Justice (DOJ) Office on Violence Against Women (OVW) developed virtual technical assistance and guidance about virtual services for victims of crime.** This technical assistance included trainings on trauma-informed legal practice in virtual court, protecting survivor privacy, and tips for lawyers and clients participating in remote hearings (in eight languages).<sup>32</sup> OVW also supported courts across the country in providing virtual access for emergency requests, time-sensitive hearings, and victim services.
- **DOJ created a centralized online Civil Rights Reporting Portal to ease the burden on victims filing complaints, including members of the Asian American and Pacific Islander community who have been targeted with bias-related incidents throughout the pandemic.** Released in June 2020, the Civil Rights Reporting Portal is now available in the top five languages spoken by the limited English proficient community – including Spanish, Traditional and Simplified Chinese, Korean, Vietnamese, and Tagalog.<sup>33</sup> The new portal was publicized to the civil justice community, civil rights organizations, and social service organizations.
- **DOJ-led Federal Government Pro Bono Program (FGPBP) provided virtual assistance during the pandemic.** The DOJ Pro Bono Program signed up for “D.C. Represents,” a local legal services project to promote pandemic-related pro bono activities, and committed to staffing a dozen legal clinics as the program transitioned to remote legal help. Many Federal agencies – including the Department of Health and Human Services (HHS), VA, Department of Labor (DOL), Federal Trade Commission (FTC), Department of State, Environmental Protection Agency, Department of the Navy, HUD, U.S. Department of Agriculture (USDA), Department of Homeland Security (DHS), and others – joined DOJ in recruiting attorneys to staff the clinics and provide legal assistance.

- **DOJ and the Department of Defense (DOD) increased their participation in Know Your Rights community outreach events and spoke at virtual civil legal aid conferences throughout the pandemic.** Since March 2020, DOJ's Servicemembers and Veterans Initiative (SVI) has conducted over 30 virtual trainings, presentations, and outreach events on servicemember rights for members of the military and their families, military legal assistance attorneys, clinics, and interagency partners. Through collaboration with DOD's Yellow Ribbon Program, SVI has also provided virtual events for servicemembers and their families to ensure that they are aware of their Federal employment and financial rights.
- **DOD's legal assistance programs provided civil legal assistance, including virtual assistance, to current and former members of the armed forces and eligible family members.** These free legal services spanned a range of civil legal issues, including family law matters and protection from consumer scams and predatory debt collectors.<sup>34</sup>
- **The National Science Foundation (NSF) continues to support research that will assist with pandemic response and improve information gaps in our civil legal system.** Among other things, NSF is supporting a project examining the impact of the COVID-19 pandemic on state courts nationwide, including the ways in which state courts have relied on remote operations.<sup>35</sup> In addition, NSF is supporting the creation of the first-ever online civil justice data commons aimed at creating more transparent and efficient civil legal systems.<sup>36</sup>
- **The Social Security Administration (SSA) offered claimants virtual options for appearing at administrative hearings and receiving and reviewing evidence related to their claims.**<sup>37</sup> SSA now gives claimants the option of appearing at administrative hearings by telephone or online video. SSA provides information to each claimant or their representative about what it means to appear online and the associated technology requirements, and conducts outreach calls with self-represented claimants to ensure they understand their hearing options.

### *3. Pioneering Strategic Collaboration and Partnerships*

- **DOJ worked with courts, legal aid providers, and public defenders, to monitor state court closures and help provide adequate notice and access to individuals with limited English proficiency and limited internet access.** Through numerous outreach meetings with civil legal aid attorneys and public defenders, court interpreters, non-profit organizations, and for-profit platform vendors, the Civil Rights Division's Federal Coordination and Compliance Section regularly assessed how the pandemic was affecting state court systems.
- **DOJ worked with legal aid providers and public defenders to identify pandemic-related enforcement issues.** On July 28, 2021, Assistant Attorney General Kristen Clarke met with and expanded the Civil Rights Division's close relationship with legal aid providers and public defenders, and specifically engaged on pandemic-related issues, such as addressing the spread of COVID-19 in prisons and jails. DOJ continues to engage with legal service lawyers and public defenders on pandemic issues as part of ongoing enforcement activities, including investigations and monitoring settlements.
- **DOJ conducted extensive outreach to gauge the impact of COVID-19 on people with disabilities.** The Outreach Committee of the Civil Rights Division's Disability Rights Section surveyed 67 Protection & Advocacy Organizations (P&As), which provide legal support to historically underserved people with disabilities to help them navigate the legal system. The P&As described COVID-related challenges in their communities, including concerns about reasonable accommodations and return to work, school reopening policies, hospital visitation policies, and evictions from group homes.
- **The Consumer Financial Protection Bureau (CFPB) released an enforcement compliance bulletin reminding landlords, consumer reporting agencies, and**

**others of their critical obligations to accurately report rental and eviction information.** <sup>38</sup> The CFPB's bulletin is one of many tools that is widely disseminated to the civil justice community in support of the CFPB's ongoing commitment to a fair and equitable recovery.

## **B. EMERGING AREAS OF FOCUS**

The Roundtable also identified emerging areas of focus in three key contexts: (1) the civil legal system; (2) the criminal legal system; and (3) the international system as it relates to America's commitment to the United Nations' 2030 Agenda for Sustainable Development Goal 16. This section describes innovation across each context and highlights common trends.

### ***1. The Civil Legal System***

Within the civil legal system, the Roundtable identified five key areas of focus that emerged during the pandemic: eviction and foreclosure prevention; access to health care; access to benefits; consumer protection; and immigration.



*“Legal aid lawyers have long been the underfunded, underrecognized heroes for defending the rights and economic well-being of the most vulnerable tenants. As we race to provide emergency rental assistance it must be understood that strengthening support for legal aid and legal service attorneys is a critical ingredient to effective eviction diversion policies and the equal access to justice required to stave off a potential eviction crisis while building a more humane national policy on evictions for the future.”*

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**GENE SPERLING**

**SENIOR ADVISOR TO THE PRESIDENT AND AMERICAN RESCUE PLAN COORDINATOR  
THE WHITE HOUSE**

#### *a. Evictions and Foreclosures*

Civil legal services are essential to helping tenants avoid eviction and secure rental assistance. They can also make the difference for homeowners unable to keep up with their mortgage payments, who with legal help may be better able to prevent foreclosure.

Examples of Federal agency efforts to address eviction and foreclosure through enhanced legal services and solutions included:

- **White House Summit on Eviction Prevention and Diversion.**<sup>39</sup> The White House, in collaboration with the American Bar Association, the Legal Services Corporation, and National Conference of Bar Presidents, convened local government, judicial, legal, and community leaders from 46 cities to develop community-specific eviction diversion programs. Recognizing that preventing evictions requires local strategies to encourage alternatives to evictions, this convening worked on solutions to provide vulnerable families with access to

counsel, divert evictions away from court, and connect renters and landlords to available resources.

- **The CFPB developed tools that homeowners, renters, and landlords can use to identify funding and resources, including the Rental Assistance Finder Tool.**<sup>40</sup> The CFPB’s targeted outreach and demonstrations included legal aid intermediaries and a broad array of direct service providers.
- **The CFPB engaged in multiple rulemaking and guidance initiatives to assist civil legal aid providers and the courts, and support self-help approaches that could keep people in their homes.** The CFPB issued a final rule in 2021 to help ensure consumers have time to explore their options before foreclosure referral and to allow mortgage servicers to get borrowers into affordable mortgage payment plans faster.<sup>41</sup> The 2021 rule also ensures that borrowers will be able to find contact information for housing counselors. The CFPB issued plain-language compliance aids to assist legal aid providers in describing the rule to their clients. It also issued guidance to help legal aid providers understand COVID-19-related compliance issues, such as language access requirements, and a compliance bulletin urging servicers to dedicate sufficient resources and staff to meet borrowers’ needs during the surge in demand.<sup>42</sup>

- **The CFPB developed a Housing Portal to connect homeowners and renters struggling with housing insecurity with resources, including legal help.**<sup>43</sup> The portal includes links and guidance for finding a local attorney.

*“Thanks to ERAP funds creating the Texas Access to Justice Foundation’s new partnership with the Texas Department of Housing & Community Affairs and Texas’ legal aid programs, we launched the first ever statewide Texas Rent Relief and Texas Eviction Diversion Program to keep Texans housed. CFPB’s Rental Assistance Finder Tool is invaluable to our legal aid navigator and attorney outreach efforts to help eligible Texans know how to apply for rental assistance to pay their landlords, and how to obtain lawyers when problems escalate, and legal representation is needed.”*

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**BETTY BALLI TORRES**

**EXECUTIVE DIRECTOR, TEXAS ACCESS TO JUSTICE FOUNDATION**

- **HUD announced an Eviction Protection Grant Program to support legal aid providers assist tenants at risk of eviction.**<sup>44</sup> Posted in July 2021, the purpose of the Eviction Protection Grant Program is to support experienced legal aid providers to offer legal assistance at no cost to low-income tenants at risk of or subject to eviction. HUD’s Office of Policy Development and Research is making \$20 million in grant funds available for services in areas with high rates of evictions or prospective evictions, including rural areas.
- **HUD published data and analysis to encourage the use of eviction diversion programs.** HUD’s research division provides housing research and market data used by a wide array of legal and housing advocates. HUD has produced articles describing tenant legal needs, articles describing the importance of local and U.S. Centers for Disease Control and Prevention (CDC) moratoria, and other reports used

by policymakers and legal aid providers.<sup>45</sup> HUD has partnered with DOJ to amplify and identify best practices for eviction diversion programs.

- **The Secretaries of HUD and Treasury, along with the Attorney General, wrote a letter to governors, mayors, county executives, and chief justices and state court administrators urging more actions to prevent evictions.**<sup>46</sup> When the U.S. Supreme Court blocked the CDC’s order establishing the Federal eviction moratorium on August 26, 2021, Secretary Fudge, Secretary Yellen, and Attorney General Garland called on state, local, and court leaders to issue their own moratoria, stay evictions while rental assistance applications are processed, and use emergency rental assistance payments and state and local fiscal recovery funds to enhance tenant access to legal representation.
- **DOJ wrote to all State Supreme Court Chief Justices and State Court Administrators urging them to adopt eviction diversion strategies and include legal assistance.**<sup>47</sup> On June 24, 2021, Associate Attorney General Vanita Gupta issued a letter encouraging state court leaders to consider adopting concrete strategies to raise awareness of rental assistance and facilitate litigants’ access to these funds, including by: requiring landlords to apply for rental assistance before filing; modifying summonses and other forms to alert litigants to the availability of eviction diversion programs and rental assistance; and partnering with community-based organizations and legal services providers to offer assistance and increase the chance for successful diversion. The letter encourages a comprehensive approach, including “a combination of rental assistance, mediation, social services, and legal assistance,” and lists possible sources of Federal funding.
- **The Attorney General issued an emergency call to action to the legal community.** Responding to the U.S. Supreme Court’s decision to reinstate a court order blocking the CDC’s eviction moratorium, Attorney General Merrick B. Garland called on the legal community to help address the ongoing housing and eviction crisis. Citing the U.S. Census Bureau’s recent survey revealing that more

than six million Americans are behind on their rent and roughly half of them fear they could be evicted in the next two months, he urged the legal community to help applicants access the Emergency Rental Assistance Program, volunteer with local legal aid providers, and support local courts in implementing eviction diversion programs. He also encouraged Federal Government attorneys to consider participating in the Federal Government Pro Bono Program to take on housing cases. Leaders across the legal community – including law school deans, the Association of Pro Bono Counsel, the Law Firm Antiracism Alliance, and the Corporation for National and Community Service, among many others – have been answering the call, issuing joint statements in support of the Attorney General’s message and mobilizing collective action.

- **LSC conducted a national study about unmet legal needs relating to evictions.** This Congressionally-directed study, titled *The Effect of State & Local Laws on Evictions*, investigated legal practices related to eviction and the extent of the country’s unmet legal needs.<sup>48</sup> The study included a survey of legal aid providers that will inform ongoing reform efforts by cataloguing novel eviction prevention programs, interventions, and practices being implemented by practitioners, courts, and policymakers.<sup>49</sup>
- **LSC launched a series of web-based data tools and virtual events about eviction laws and the access-to-justice implications of the pandemic.** These new tools included an eviction tracker to monitor case filings around the country, and a comprehensive database of state and local eviction laws and processes built in partnership with Temple University’s Center for Public Health Law Research.<sup>50</sup> LSC also hosted a series of virtual events and podcast discussions with information from legal aid providers, business leaders, members of Congress, state Supreme Court Justices, and academics.

*“Nearly all the 50 or so metro area teams participating in this [White House Summit] to head off evictions include legal aid providers. And that’s critical to the success of our efforts. None of the policy initiatives we have been talking about – the eviction moratoria, eviction diversion programs, or distribution of rental assistance – none of those policy initiatives are self-executing. The success of those initiatives requires assistance to ensure that the benefits Congress, state and local governments intend to distribute in fact reach the tenants and landlords who are the intended beneficiaries. Legal aid programs provide that assistance.”*

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**RON FLAGG, PRESIDENT, LEGAL SERVICES CORPORATION**  
**WHITE HOUSE SUMMIT ON EVICTION PREVENTION, JUNE 30, 2021**

- **Treasury guidance clarified that critical funding streams could be used to support eviction diversion plans, including counseling, navigators, legal services, and court programs.** Per Treasury’s guidance, states and localities, in partnership with their court systems and legal aid providers, can tap two sources of Federal support to fund their eviction diversion and housing stability efforts: ARPA’s \$350 billion Coronavirus State and Local Fiscal Recovery Funds and \$46.5 billion in Emergency Rental Assistance Program dollars.<sup>51</sup> Treasury strongly encouraged partnerships with courts to prevent eviction, and made clear that allowable services include legal services related to eviction proceedings and maintaining housing stability.

*“When we talk about Veterans’ legal challenges, by definition we’re talking about their health care and well-being. Our legal clinics and Medical Legal Partnerships integrate legal assistance into healthcare for Veterans and their families in order to fully address their needs and well-being – needs that are only amplified during the pandemic. Providing full access to justice and legal services for Veterans takes a unified, inter-agency effort, from the Federal level down to state, city, and community level – grassroots where Veterans work and live. We are grateful to be part of the Roundtable which supports legal services as part of holistic health for Veterans and other vulnerable populations.”*

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U.S. SECRETARY OF VETERANS AFFAIRS DENIS R. MCDONOUGH

- **Treasury guidance clarified that the Homeowner Assistance Fund (HAF) can support legal services to help prevent foreclosure.** The Homeowner Assistance Fund, a critical component of the ARPA, provided nearly \$10 billion to states, the District of Columbia, territories, and Tribes to help homeowners impacted by the pandemic. Treasury guidance made clear that HAF can fund legal services related to foreclosure prevention or displacement. It can also be used to assist individuals with mortgage payments, homeowner’s insurance, utility payments, and other specified purposes.

#### *b. Healthcare*

When someone faces a civil legal problem, such as eviction, the denial of healthcare benefits, or unemployment, it can interact with other factors and affect an individual’s long-term health. These potential stressors may have an outsized impact on underserved communities – including people of color, low-income individuals, and individuals with disabilities, who often experience deep-rooted disparities in the health care system.

Medical-legal partnerships, which introduce legal services into traditional medical settings, may help healthcare teams more effectively treat patients and address underlying issues and stressors that could worsen a patient's health. For example, studies show that lawyers embedded in the healthcare system have helped patients access benefits and reduce their medical debt, avoid utility shutoffs, improve preventative care, and decrease inpatient readmissions.<sup>52</sup> To be sure, medical-legal partnerships do not address all of the underlying issues and disparities in our health care system. However, the Federal Government should continue to explore these partnerships to mitigate civil legal problems, and their resulting health consequences, whenever possible.

The VA and HHS have long recognized the importance of access to justice in addressing health conditions. Well before the pandemic, these agencies used a variety of strategies to encourage legal aid providers to collaborate with health care teams.

For example:

- **HHS Health Resources and Services Administration funded the National Center for Medical-Legal Partnership to train health centers on legal aid during the pandemic.** The National Center for Medical-Legal Partnership provides training to help lawyers integrate their expertise into health care settings in order to help health centers address the legal problems at the root of many health inequities. During the pandemic, the National Center for Medical-Legal Partnership developed and hosted national trainings for health centers to review social determinants of health and provided guidance relating to the provision of legal services.<sup>53</sup>
- **HHS-funded Health Centers partnered with legal organizations to assist patients.** During the pandemic, at least 163 federally-funded health centers across the United States have deployed medical-legal partnerships.<sup>54</sup> In 2014, HHS's Health Resources and Services Administration revised its rules to allow federally qualified health centers to use funds for non-clinical services that improve health or access to medical care.<sup>55</sup> During the pandemic, 40 percent of medical-legal partnerships linked to health centers have used this funding to support legal services for patients.



- **HHS’s healthcare outreach programs included legal aid programs among their grantees.** HHS’s Centers for Medicare & Medicaid Services (CMS) funds the Connecting Kids to Coverage program, which supports efforts to reach out to families with children eligible for Medicaid and the Children’s Health Insurance Program and helps get them covered. Additionally, the Navigator program supports assistance for consumers who are shopping for and enrolling in coverage through a Health Insurance Marketplace. In 2021, grant awardees included several legal aid programs.
- **VA helped address homeless veterans’ health needs with legal aid.** According to VA annual surveys, civil legal needs are the top area of unmet need for homeless veterans every year.<sup>56</sup> To assist in meeting the needs of homeless and other veterans, 31 Veterans Health Administration facilities have forged medical-legal partnerships to connect veterans to legal services alongside VA healthcare.<sup>57</sup> Some medical-legal partnerships in VA facilities have collaborated with the National Center for Medical-Legal Partnership to develop an implementation guide for VA medical centers that is designed to assist in scaling and sustaining these partnerships.<sup>58</sup>
- **VA encourages medical facilities to provide space for legal services organizations.** Since the pandemic began, the VA Office of General Counsel has hosted bi-monthly COVID-19 medical-legal partnership calls to provide technical assistance, training, and support to more than 170 VA legal clinics, and to make a wide array of resources available for legal service providers supporting veterans.<sup>59</sup>
- **VA researchers assessed the health benefits of legal aid to veterans.** The VA National Center for Homelessness Among Veterans conducted surveys of VA-hosted legal clinics and a study on VA medical-legal partnerships.<sup>60</sup> Survey findings showed the range of veterans’ civil legal needs and the valuable role legal aid clinics provide in screening and connecting veterans with mental health and substance use disorder treatment. The survey also suggests that because clients may

need more and longer interventions to address their legal needs, VA-housed legal clinics require greater resources and expansion.

*c. Public Benefits*

The pandemic generated an unprecedented need for government assistance, including rental and mortgage assistance, child tax credits, unemployment benefits, and utilities payments. At the same time, applying for benefits became even more challenging in the expanded virtual environment – particularly for people with limited or no access to the internet or limited English proficiency. The result was that some pandemic assistance programs did not reach eligible individuals – including those who most needed the benefits, and who the benefits were expressly designed to support.

Many Federal agencies relied on legal aid partners to help disseminate information through trainings, simplified application processes, self-help tools, and other resources to help people understand eligibility requirements and complete applications.

Examples of agencies' efforts to help people learn about and obtain assistance include:

- **The CFPB developed and disseminated consumer education materials that have been widely used by legal aid and community organizations to help secure benefits.** These resources are used by legal aid and other community organizations to help people obtain stimulus and Advanced Child Tax Credit (CTC) payments. For example, the CFPB issued a guide to Economic Impact Payment resources.<sup>61</sup> On June 21, the CFPB announced additional education materials to help low- and moderate-income families learn about the Advanced Child Tax Credit and released these materials in six languages.<sup>62</sup> CFPB also conducted a series of outreach webinars in June and July 2021 on the Advanced Child Tax Credit for community and legal aid partner organizations working with hard-to-reach populations.
- **DHS's Federal Emergency Management Agency (FEMA) partnered with the American Bar Association Young Lawyers Division (ABA YLD) to launch the Disaster Legal Services program.** FEMA worked with the ABA YLD to provide

free legal aid through local volunteer attorneys to assist survivors of severe wildfires, storms, tornadoes, and floods with their disaster-related legal needs, including requests for benefits and assistance, housing and insurance law problems, tax issues, consumer fraud, and family law matters such as child custody and guardianship issues.

- **DOL Civil Rights Center conducted trainings and outreach to civil legal aid providers to better assist people with limited English proficiency in accessing unemployment insurance.** Specifically, the Civil Rights Center provided training to civil legal aid providers on the legal requirements for providing services and information to individuals with limited English proficiency applying for unemployment insurance.
- **DOL workers' compensation claimants used a new electronic filing and service system and received virtual trainings in its use.** DOL's workers' compensation appellate adjudicatory boards provided electronic filing options to improve access for the mostly self-represented people with workers' compensation claims, as well as special training sessions in using the virtual system. Similarly, the Mine Safety and Health Division provided remote hearings and increased remote capacity to meet confidentially with whistleblowers so that miners with complaints could still enforce their rights.
- **DOL Wage and Hour Division focused on education and enforcement of new and existing pandemic-related worker protections.** The Wage and Hour Division conducted outreach and pursued enforcement of paid leave requirements. The Division also launched an Essential Workers Essential Protections Initiative, which has hosted more than 500 events for over 22,000 participants since April 6, 2020, and provides Know Your Rights education programs about existing worker protections.
- **DOL Women's Bureau announced a new funding opportunity to help low-wage women workers.** The new \$1.5 million grant program, Fostering Access, Rights and Equity (FARE), calls on states to develop partnerships with community-

based organizations and other non-profits including legal aid organizations to conduct outreach to women workers to help them understand and exercise their rights and benefits in the workplace, including as they relate to working during the pandemic.

#### *d. Consumer Protection*

Even before the pandemic, 68 million Americans had debt in collections, with the greatest share of debt delinquency in southern communities and communities of color.<sup>63</sup> A 2020 study by The Pew Charitable Trusts found that debt collection lawsuits are dominating national courts and, in some states, the number of debt claims more than doubled between 2014 and 2018.<sup>64</sup>

The Pew study estimates that fewer than 10 percent of defendants in debt collection lawsuits have legal representation, in comparison to nearly all plaintiffs.<sup>65</sup> Moreover, 95 percent of debt cases are resolved in favor of collectors, and 90 percent of debt cases end in a default judgment against the defendant.<sup>66</sup> This two-tiered system has disproportionate effects on historically underserved communities: in some cities, the rate of judgment in mostly Black communities is more than double the rate in predominantly white communities.<sup>67</sup> Defendants in debt collection lawsuits who have access to counsel are more likely to challenge unsubstantiated cases against them, reach a settlement, and even win their cases, avoiding long-term financial and psychological consequences.<sup>68</sup>

Federal agencies charged with protecting consumers have continued their work during the pandemic, and have approached their tasks with renewed urgency to combat fraud and educate the public about consumer protection.

Federal efforts to protect consumers included:

- **The FTC hosted 15 virtual listen and learn sessions with legal aid organizations.** Participants discussed the consumer and financial issues that people in their area are facing, how best to reach consumers during the pandemic, and how to distribute FTC resources to people who need additional information. For

example, in 2020, the FTC experienced a nearly 3,000% increase in the number of reports about identity theft related to government benefits, especially unemployment insurance identity theft. In addition, reports about tax identity theft increased substantially, with many reports relating to stimulus payments. The FTC developed new messaging on IdentityTheft.gov to help individuals, legal aid providers, and other community organizations learn how to report and recover from this type of fraud.

- **The FTC Community Advocate Center on ReportFraud.ftc.gov helped legal aid organizations report problems.**<sup>69</sup> In March 2021, the FTC launched the Community Advocate Center, an online resource, to assist providers of free or low-cost legal services with reporting fraud and other unlawful practices to the FTC. Development of the initiative followed a series of focus groups with input from LSC, the National Legal Aid & Defender Association, the National Consumer Law Center, and the National Association of Consumer Advocates. The Community Advocate Center helps organizations provide community members with specific advice to report fraud and get their money back.

#### *e. Immigration*

In immigration proceedings, the stakes are high – legal representation can make the difference between someone safely remaining in the United States or being deported and potentially separated from family. Immigrants with limited English proficiency are particularly vulnerable and face significant hurdles in understanding and navigating the immigration court system. Further, immigrants and non-citizens experience a host of related legal needs outside of the immigration courtroom, including intimate partner violence and child custody disputes.<sup>70</sup>

These wide-ranging needs require a holistic and comprehensive response, particularly in light of the pandemic's toll. The Justice Department, together with key Roundtable partners, have a unique opportunity, if not obligation, to explore a comprehensive approach to meeting the needs of immigrant populations.

Numerous Roundtable departments and agencies have already found promising ways to do so through collaboration and innovation. For example:

- **DHS’s United States Citizenship and Immigration Service (USCIS) permits filing flexibilities for all applicants and petitioners, including those seeking visas, citizenship, and asylum, and provides remote interviews and call-in options.** Since March 2020, USCIS has relaxed certain deadlines and signature requirements in recognition of the challenges posed by the COVID-19 pandemic. For example, USCIS allows anyone submitting an immigration benefit form or document to use an electronic reproduction of an original signature rather than an original signature. This includes, but is not limited to, those submitting asylum applications. USCIS conducts video-facilitated asylum and naturalization interviews and uses available technologies, including mobile devices provided by USCIS, to ensure that the officer, applicant, interpreter, legal representative, and witness(es) can fully and safely participate in the interview. USCIS also provides call-in options for attorneys and/or authorized representatives, as well as interpreters.
- **DOD and DHS USCIS launched remote interviews and oaths of citizenship during the pandemic.** DOD Military Departments collaborated with USCIS to conduct hundreds of remote interviews and oaths of citizenship for active duty personnel at overseas military installations who were unable to travel due to COVID-19-related travel restrictions.
- **DOJ conducted virtual outreach and trainings to immigration legal services providers.** The Civil Rights Division’s Immigrant and Employee Rights Section (IER) conducted virtual outreach to immigrant service providers, including organizations providing legal services to asylees, refugees, and other immigrant workers. For example, since January 2020, IER has conducted 27 virtual presentations specifically geared toward asylee and refugee service providers, covering topics such as documentation to establish a worker’s legal right to work.

## 2. *The Criminal Legal System*

While the pandemic had a widespread impact on an already-burdened civil court system, by many accounts, the criminal legal system was even harder hit by the COVID-19 pandemic. There are over 2 million people incarcerated in the United States in crowded and congregate jails, prisons, and detention centers – environments that are highly susceptible to rapid spread of the virus. Meanwhile, court closures halted trials and other proceedings and temporarily eliminated statutory deadlines. Meaningful access to counsel was cut off for many defendants due to restrictions on visitation and communication.

*“The pandemic sharply curtailed pretrial access to counsel, a right that is inextricably linked to the legitimacy of our criminal justice system. Throughout the pandemic, lawyers reported uneven and limited availability of phone and video calls, and difficulty accessing their clients during critical stages of their case. These hurdles, along with other aspects of the pandemic, created significant challenges in preparing for cases and building trust with clients.”*

**DAVID PATTON**

**EXECUTIVE DIRECTOR FEDERAL  
DEFENDERS OF NEW YORK**

While we must continue to evaluate additional data, early reports suggest that the pandemic also exacerbated the long history of racial disparities in our criminal justice system.<sup>71</sup> Notably, as some jurisdictions began to reduce incarcerated populations in March of 2020 in response to the pandemic, the proportion of African-American people incarcerated increased.<sup>72</sup>

At the same time, certain jurisdictions explored innovative ways to safely reduce the incarcerated population and reduce the risk of virus transmission, including through temporarily paused cash bail;<sup>73</sup> expanded access to free communication for those incarcerated;<sup>74</sup> reduced and waived fees;<sup>75</sup> and the elimination of incarceration for “technical violations,” like failing to check-in on probation and parole.<sup>76</sup>

Examples of Federal innovation in the criminal legal system included:

- **DOJ, in consultation with CDC and HHS, prepared guidance on the use of ARPA funding to mitigate the spread of COVID-19 in confinement facilities and maintain access to counsel and the courts.** The guidance was distributed to public health authorities and eight local jurisdictions with the largest populations. The guidance clarified that ARPA funding may be used for video conferencing technology and other measures to support attorney/client purposes and court appearances; to detect, diagnose, trace, and monitor COVID-19; and to develop policies and practices to safely reduce the incarcerated population.
- **DOJ's Bureau of Prisons (BOP) enabled virtual visitation.** Under the CARES Act, BOP authorized inmates to conduct visitation through video teleconferencing and telephonically, free of charge. To ensure that inmates maintain community ties, BOP also increased inmate telephone minutes from 300 to 500 per calendar month.<sup>77</sup>
- **DOJ's Bureau of Justice Assistance (BJA) administered the Coronavirus Emergency Supplemental Funding Program.** BJA made these funds available to local and state criminal justice partners to support the reopening of the criminal justice system, eliminate case backlogs, support diversion and alternatives to incarceration, and improve jail operations. In FY20, BJA awarded grants to 1,828 jurisdictions to help state and local courts protect the right to counsel and other rights guaranteed under the Sixth Amendment.
- **DOJ Drug Court Training and Technical Assistance Program helped assess the capacity of courts to maintain operations during the pandemic.** From May to September 2020, 172 active BJA adult drug courts and veterans' treatment courts participated in the COVID-19 impact virtual interview. The results gave DOJ data to develop future policies that will support innovative strategies to keep courts open and ensure equitable access to court-related services.<sup>78</sup>



- **DOI funds Tribal justice systems, including legal aid providers, public defenders, and guardians ad litem.** DOI Indian Affairs assesses the needs of individual Tribal justice systems and provides funding to 348 Tribal Courts for personnel and infrastructure. The three most requested personnel positions have been public defenders, guardians ad litem, and Indian Child Welfare Act attorneys. Since March 2020, DOI has funded free trainings hosted by innovative Tribal Courts, designed to strengthen trial skills for judges, prosecutors, and public defenders, focusing specifically on domestic violence, violence against women, opioids and narcotics, child welfare, juvenile truancy and delinquency, and expungement.

*“Access to justice is critical for every American, but in Indigenous communities it has been historically neglected, underfunded and under-resourced. The COVID-19 pandemic only exasperated this lack of infrastructure, funding and support in communities across the country. The re-launch of the Legal Aid Interagency Roundtable is a welcome collaboration as we work to address the unique challenges that Native people face in receiving legal aid.”*

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**U.S. SECRETARY OF THE INTERIOR DEB HAALAND**

### ***3. International Systems and Sustainable Development Goal 16***

In September 2015, the United Nations adopted the 2030 Agenda for Sustainable Development to end extreme poverty and take action on climate change and inequality. The 2030 Agenda for Sustainable Development set forth 17 Goals and 169 associated targets to achieve the agenda.

Goal 16 – and specifically, target 16.3 – recognizes that access to justice is essential to promoting peaceful and inclusive societies for sustainable development. Target 16.3 calls on countries to “[p]romote the rule of law at the national and international levels and ensure

equal access to justice for all.” Unlike past global anti-poverty efforts, which primarily focused on developing countries, the 2030 Agenda applies to every country, including the United States.

The Department of State and the U.S. Agency for International Development (USAID) offered significant leadership in developing and adopting the 2030 Agenda.

Examples of ongoing efforts to advance the Sustainable Development Goals during the pandemic included:

- **USAID rule of law funding and technical assistance activities quickly pivoted to working with partner countries to tap technology to support courts and justice systems around the world.** USAID worked to apply its resources to remedying and preventing pandemic related legal problems and addressing related justice issues. For instance, in Moldova, court automation and infrastructure provided by the USAID Open Justice Program enabled courts to hold digital, remote hearings; and in Kosovo, the USAID Justice System Strengthening Program assisted with the country’s first online hearings and supported the Kosovo Judicial Council in preparing protocols to guide additional remote hearings.<sup>79</sup>
- **USAID supported technological innovations to improve legal aid through its rule of law assistance.** In Colombia, due to the rise in gender-based violence during COVID-related lockdowns, the USAID Justice for Sustainable Peace program developed a “legal app” with a panic button to report gender-based violence, request assistance, and obtain information and referral pathways to services. USAID also issued its Gender and COVID-19 Guidance,<sup>80</sup> which addresses barriers to access to justice and legal services for women, advises on how to make court systems remote and monitor their accessibility, and helps local legal aid organizations develop strategies to provide legal services to women. USAID also produced guidance to address legal problems and justice needs related to the pandemic, in part through the use of accessible online platforms and other technologies.”<sup>81</sup>

*“In working to facilitate access to justice around the world, we believe the Roundtable initiative is an effective model for how governments can do so by integrating legal and other supportive services and partnering with civil society and non-governmental actors.”*

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**SAMANTHA POWER**

**ADMINISTRATOR OF THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**

## IV.

# LOOKING AHEAD

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### A. CONTINUED WORK TO IDENTIFY SOLUTIONS

It has been nearly 18 months since our country entered a state of national emergency, but we continue to collect information and assess the full scale of its impact on access to justice. It is clear that the justice gap has all too often prevented emergency relief and Federal Government programs from reaching the individuals who need them most.

Much remains to be learned about the benefits and unintended consequences of innovations developed to address the COVID-19 pandemic. Areas of further focus for the Roundtable will include:

#### *1. Equitable Expansion of Technology*

Since the onset of the pandemic, Federal agencies have embarked upon an unprecedented effort to develop technologies that enable virtual access to services, information, and proceedings. Further research is needed to fully assess the impact of these innovations on access to justice.

Specifically, there is a need for an assessment of how new technologies impacted those without access to counsel, as well as those without access to computers, smart phones, or broadband services. While use of these technologies is intended to expand access to government services and proceedings, there is a risk that they perpetuate – or even exacerbate – existing disparities.

For example, the shift to remote hearings often eliminated barriers like lack of transportation, lack of childcare, and the inability to take time off of work, which reduced default or non-appearance rates.<sup>82</sup> However, remote appearances can create difficulty in communicating with counsel and have been linked to higher pretrial bail amounts and to witnesses being perceived as less credible.<sup>83</sup> These early studies suggest that technical innovations in the criminal legal system must be reviewed carefully to assess outcomes and impact over time. There is also a need for a data-driven, comprehensive analysis to ensure that technology is employed in a manner that strengthens, rather than undermines, each person's constitutional and statutory rights.

## ***2. Legal Representation in Emergency Situations***

The pandemic has made clear that it is critical to have strong partnerships between pro bono providers and legal services organizations. Forging those partnerships will help enable a swifter and more robust access to justice network to be deployed in crisis moments.

The need for an immediate response to crisis was perhaps most apparent during the wave of evictions that stemmed from the pandemic. As discussed in this report, the pandemic exacerbated the affordable housing crisis, and placed many Americans in jeopardy of losing their homes. Federal programs were immediately leveraged to mitigate the harms of this crisis, but hurdles to accessing those programs underscored even further the need for counsel.

Additional study of the response to the eviction crisis is needed, both to identify successful measures so they can be replicated and to identify areas for improvement. To be clear, as the pandemic continues, the need for legal services to combat evictions is ongoing. But even so, it is critically important to begin an assessment so that the legal services community can be better equipped to confront future crises.

### ***3. Ensuring Partnerships Are in Place Before an Emergency***

The pandemic has underscored the critical and dynamic role of legal services in protecting the most vulnerable amidst crisis. That role is essential not only in traditional legal proceedings, but across different contexts, including in the areas of health, housing, employment, and public benefits. Strengthening partnerships with the legal services community in these sectors can provide real help to those most in need. As discussed in the report, for example, the pandemic highlighted that medical-legal partnerships can help patients access benefits and reduce medical debt, which can ultimately mitigate civil legal problems down the line.

Going forward, it is essential to determine how we can embed such partnerships across other Federal programs that impact health and safety. This requires careful study of the benefits of medical-legal partnerships during the pandemic, as well as an assessment of the need for meaningful partnerships in other areas. Anticipating the need for specific partnerships and ensuring that those partnerships are in place – before emergencies hit – can help leverage the impact of legal services and enable a more robust and rapid response.

#### **B. STRATEGIES FOR CONTINUED ROUNDTABLE REVIEW**

Roundtable agencies have enormous opportunities to expand access to justice – and, at the same time, achieve the broader goals of Federal programs – by using funding, training, and other resources to increase access to legal assistance and the courts. Recognizing that most parties in civil litigation are self-represented, this work must include a focus on navigators and self-help models, and explore how to expand access to counsel where feasible.

DOJ's Office for Access to Justice and the initial Roundtable pioneered an approach to integrating legal aid into the work of agencies, especially in cross-cutting areas of responsibility, such that it could be helpful in fulfilling agencies' missions. The Roundtable will recommit to that strategy and help facilitate legal assistance to navigate essential Federal resources, like emergency rental assistance and the child tax credit.

Federal funding is particularly critical to support innovative methods for the expansion of access to legal assistance and related services across Federal agency initiatives and programs.

In addition, the Roundtable's collaboration revealed the need to transcend silos, particularly in light of the interconnected nature of legal needs across the many fields of its member departments and agencies. Evictions can lead to homelessness, which is connected to poverty and higher rates of arrest. A criminal conviction can cause the loss of benefits, immigration status, housing, and other Federal assistance. Children in foster systems encounter the juvenile justice system at disproportionately high rates. And medical needs are often inextricably linked to civil legal needs. The Roundtable has an opportunity to break down silos between different agencies and departments responsible for tackling discrete elements of a problem and work toward identifying collaborative solutions. The Roundtable will also work to expand upon this approach to help the larger ecosystem of public and civil-society actors embrace access to justice as a means of achieving their own goals.

These themes are just several among many that the Roundtable may consider. The Roundtable will also remain open to perspectives about other potential priorities, particularly as departments and agencies reflect on the findings of this report and prepare for a post-pandemic future.

The reinvigoration of this interagency Roundtable effort represents a critical step toward improving access to Federal programs, counsel, and the courts. Collaborative innovation will be required to meet the task of establishing equal access to justice – and embodies the essence of our country at its best.

## V. ENDNOTES

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<sup>1</sup> More than 40 million Americans have been infected with the COVID-19 virus and more than 653,000 have died from issues related to COVID-19. Centers for Disease Control and Prevention. *COVID data tracker*. Retrieved September 9, 2021, from <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>

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