

January 21, 2021

Chairman William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Maryland Senate
Annapolis, MD 21401

Re: Testimony in Support of Right to Counsel in Immigration Proceedings Bill, SB 317

Dear Chairman Smith and Committee Members:

The National Immigration Law Center is writing in strong support for moving SB 317, “Office of the Attorney General - Right to Counsel in Immigration Proceedings Coordinator, forward. As a response to the draconian and inhumane immigration enforcement practices in place for decades, a universal representation program would be a bold action by the state of Maryland to defend community members who are at risk for deportation.

We were heartened to hear that Baltimore City and Prince George’s County already provide some funding for representing detained immigrants from their jurisdictions. These programs function as a critical line of defense for Maryland residents who face permanent separation from their communities. The current bill before you seeks to create a statewide Right to Counsel program that would bring us closer to the vision that everyone, no matter their background, should have a fair day in court and an opportunity to secure immigration relief under our laws.

We urge you to support SB 317 for the following reasons:

Legal Defense for Immigrants Furthers Core Values of Due Process and Justice

In order for the core principles of dignity, fairness, and justice for all to have meaning in the immigration court system, every person in removal proceedings should have an attorney.

As the Supreme Court has acknowledged,¹ the consequences that stem from deportation are often more severe than those that follow a criminal conviction. Immigrants face permanent exile from the country they consider home, and permanent separation from their loved ones, if they lose their immigration case. Some also face persecution, torture, and death in their countries of

¹ Padilla v. Kentucky, 559 U.S. 356, 368 (2010).

origin. Dana Leigh Marks, Immigration Judge and President of the National Association of Immigration Judges, referred to some cases in removal proceedings as “death penalty cases heard in traffic court settings,” because of the speedy court process and the consequences at stake.²

In addition to carrying severe consequences, removal proceedings are challenging because of structural barriers. Immigration law has often been compared to the tax code in its complexity. Yet there are fewer procedural protections than in criminal trials, even beyond the absence of appointed counsel. In a removal proceeding, the government has a trained prosecutor in every case representing its interests, while the indigent immigrant does not. An immigration system that pits unrepresented, often non-English speaking immigrants against trained prosecutors is unfair, particularly when winning a case is based less on the merits of the case than on the immigrant’s ability to pay for an attorney.

By ensuring that immigrants have skilled attorneys by their side to assess the merits of their cases, make legal arguments, gather supporting documents, and identify witnesses and experts, a universal representation program safeguards due process and fairness in the deportation system.

Having Representation in Removal Proceedings Increases the Chances of Success

Immigrants are more likely to succeed in fighting their deportation cases when they have a qualified immigration attorney representing them. Research has consistently supported this outcome in deportation proceedings. One study conducted in New York City, which implemented one of the first universal representation programs in the nation, found that representation made it 1,100 percent more likely that an individual would succeed in their case.³

Having an attorney represent an indigent immigrant can mean the difference between being able to stay in the country and obtain legal immigration status, and being deported and torn from friends, family, community, and the life that has been built here.

Maryland Must Fortify its Commitment to Immigrant Communities

State governments play a key role in protecting their immigrant residents as the federal government continues to engage in cruel immigration enforcement. We have a new President, but ICE and our dysfunctional immigration system are still here. Though a pause on deportations was enacted, it will only cover some people for 100 days. Deportations will continue to happen, and community members who are already facing deportation need representation now.

² Dana Leigh Marks, “Immigration judge: Death penalty cases in a traffic court setting,” CNN Opinion, Jun. 26, 2014, <http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html>.

³ Jennifer Stave, et al., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity*, Vera Institute of Justice, Nov. 2017, <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>.

Supporting SB 317 is one way to support immigrant communities and momentum for these programs is building across the country. New Jersey invested \$6.2 million in a statewide program last year (doubling their 2019 commitment) and California is currently investing \$65 for immigration legal services, including deportation defense for both detained and non-detained immigrants. New York's Liberty Defense Project **provided** \$11.5 million in 2019 and \$10 million in 2020 for direct representation in deportation hearings and other cases. And Oregon's **budget** for 2019-21 allocated \$2 million for deportation defense.

Maryland should stand by the many immigrants that call Maryland home and do everything in its power to ensure immigrants are not left to stand alone as they fight to stay in the country. SB 317 will keep loved ones together, employees working, and communities whole. Fundamental fairness demands that when our community members face imprisonment and separation from their loved ones, they receive the basic and necessary protection of legal representation.

For these reasons we urge you to support the Right to Counsel in Immigration Proceedings Bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shiu-Ming Cheer', with a stylized, cursive flourish at the end.

Shiu-Ming Cheer
Director of Movement Building & Strategic Partnerships