

Senate Judicial Proceedings Committee

**SUPPORT SB88 – State and Local Government – Participation in Federal
Immigration Enforcement**

Testimony of Nicholas Katz, CASA de Maryland

January 27, 2021

Dear Honorable Chairman William Smith and Members of the Committee:

My name is Nicholas Katz and I am the Legal Director for CASA de Maryland (“CASA”). CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 90,000 members in Maryland. Thank you for this opportunity to testify today in support of SB88, known as the “Trust Act”.

Trust is at the core of SB88. The primary goal of this bill is to ensure that the hundreds of thousands of immigrants who call Maryland home feel safe interacting with their government, whether that means accessing the benefits to which they are entitled, calling on the police to keep them safe, or just driving across a county line or helping a family member do some yardwork.

SB88 is long overdue. The past four years have done irreparable harm to our social fabric, with immigrants demonized, discriminated against and attacked by the federal government. Although we may have a new president, those wounds will not soon heal, and the fundamentals of our federal immigration system remain broken, targeted not at welcoming newcomers but rather excluding those who seek to contribute to our communities. Even before the previous administration, we saw a system that deported millions of individuals under former President Obama, tearing apart families and shredding the fabric of our communities. Too often, we are complicit in these efforts, allowing Maryland’s legitimate interest in keeping residents safe to enmesh us in this broken federal deportation machine which actually makes us far less safe.

As Maryland, along with the rest of the world, continues to struggle with a global pandemic, it has been our immigrant community that has stood up to keep our state running. By some estimates, sixty-nine percent of undocumented workers are deemed “essential” workers¹, helping to keep our food supply chain running, construction industry building, and restaurants open – among many other things. Your delivery driver should not have to fear that if they get pulled over for driving without a license, their family may be at risk of losing their sole breadwinner to deportation.

¹ *Immigrant Essential Workers are Crucial to America’s COVID-19 Recovery*, December 16, 2020, available at: <https://www.fwd.us/news/immigrant-essential-workers/>

Fundamentally, SB88 simply takes immigration and citizenship status out of the equation when you are interacting with state and local government. Its strong prohibition on inquiring about such status, together with its mandate that such inquiries do not factor into decisions about access to State resources, unless required by law, and its explicit rejection of Maryland's participation in any discriminatory registry, together form a powerful barrier between the State and an out-of-control federal immigration enforcement regime.

Importantly, this bill does nothing to impact the ability of Maryland to prosecute immigrants who have committed crimes. Rather, it simply puts everyone, regardless of immigration status, on an equal playing field. Immigrants who commit crimes will still be detained and prosecuted for the offenses, and face the same criminal penalties as anyone else. But they will not have to fear that Maryland will facilitate their transfer to immigration agents, placing them into a broken and dangerous *civil* system, over which Maryland has no control, that perversely has far greater consequences for their families than the criminal justice system.

This bill also does nothing to inhibit state and local law enforcement from collaborating with immigration enforcement agents on criminal matters. Investigations into things like human trafficking or drug trafficking are unrelated to the civil immigration enforcement system and as such are not governed by this legislation. The goal of SB88 is not to protect criminals. In fact, it is exactly the opposite. It is designed to encourage immigrants to feel safe accessing the criminal justice system, to report crimes without fear of retaliation based on their immigration status, to not turn the other way when they see a cop patrolling their street or a squad car driving down the road. Studies have shown that jurisdictions that enact policies to separate themselves from the civil immigration enforcement system are safer and more prosperous.²

CASA's strong support for SB88 stems from the experiences of our members. Each year thousands of community members come through CASA's doors, seeking assistance with legal issues, access to benefits, and for many other services. Over the last several years, the desperate need for these services has only risen, as the federal government has taken punitive – and often illegal – actions against the immigrant community. With continued hateful rhetoric coming from the highest levels of our government, immigrants in Maryland have become increasingly skeptical of engaging with government at any level. Stories like those outlined below, where State police unlawfully detained a man for helping his family trim a tree, or where a victim in a car accident suddenly faces permanent separation from her family, only exacerbate these feelings of unease.

That is why several of Maryland's largest localities, including Montgomery County, Prince George's County, Baltimore County, Baltimore City and a host of localities, including the city of Annapolis where we now sit, have taken bold action to protect their most vulnerable community members. But those actions are not enough. Only you can

²Wong, Tom K., *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress, January 26, 2017, available at: <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>

put in place the comprehensive protections necessary to ensure that Maryland is no longer complicit in the operation of a federal deportation machine that is out of control and ripping our communities apart.

SB88 is a huge, positive step in that direction. By generally prohibiting State employees, including law enforcement agents, from inquiring about an individual's citizenship or immigration status, this bill sends a powerful message to immigrant Marylanders that we value them as full members of our community. As you are no doubt aware, nearly one million Marylanders are foreign born, representing more than 15% of our state's population. Immigrant residents of Maryland help drive our state's economy, as we are home to more than 176,000 immigrant businesses and 67,000 immigrant entrepreneurs.³ Maryland's immigrants pay more than \$12 billion in taxes each year.⁴

Almost all of CASA's more than 100,000 members have ties to another country, and many live in mixed status families, where some members have lawful immigration status in the United States and others may not. As we seek to protect our members, and their communities, from the rogue and often unlawful immigration policies of the current federal administration, it is absolutely crucial that Marylanders have faith that interacting with local and state government officials will not be a pipeline to deportation.

In addition to prohibiting the initial inquiry into immigration or citizenship status, SB88 goes further to protect immigrant Marylanders, by prohibiting jurisdictions from entering in agreements like the Intergovernmental Services Agreements ("IGSA"s) that transform County jails into immigration detention centers. On a weekly basis, CASA is called on to respond to ICE raids, where our members are snatched up by immigration agents and whisked off to detention centers in Frederick, Howard and Worcester Counties. Our experience shows us that more ICE beds equals more people in detention. It is crucial that we do all that we can to stop the inhumane practice of imprisoning people who are facing civil immigration violations.

One of those calls came in August 2019, when the family of Jose Villalta reached out to CASA. Jose has lived in Montgomery County for nearly 15 years, after coming to the United States at the age of 17. On August 7, 2019 he was helping a family member trim a tree in Rockville, when he was stopped by police from the Maryland Department of Natural Resources (DNR). Although his only "crime" was failing to have the proper license to cut down a tree, a violation punishable by a small fine, DNR police illegally detained him based on an old deportation order. Jose went on to spend months in immigration detention, and continues to fight his deportation to this day. Despite the fact that Jose was in Montgomery County, which has a strong Trust policy to protect its residents, Jose was powerless to stop the State police from acting. Jose's case demonstrates why we cannot rely on local policies to truly engender the public trust that

³Baltimore Sun Editorial Board, *Maryland's Economy Depends on Immigrants*, October 10, 2019, available at: <https://www.baltimoresun.com/opinion/editorial/bs-ed-1013-immigrants-maryland-20191010-s66dcyrb5ec5fxbnsmlkaif3a-story.html>

⁴New American Economy, *Immigrants and the Economy in Maryland*, available at: <https://www.newamericaneconomy.org/locations/maryland/>

is necessary for our communities to be safe. We must enact state level legislation that prevents all government actors from acting as agents of our broken immigration system.

Sadly, Jose's story is far from an isolated incident. The story of one of CASA's most powerful and brave leaders illustrates how this detention regime hurts good people, undermines the fabrics of families and communities and leads to results that pervert justice. Roxana Orellana Santos was detained by ICE on January 8, 2018 after a routine ICE check-in. Despite the fact that she had multiple pending applications for immigration relief, and was litigating a federal civil rights case against the Frederick County Sheriff's Office, it was only after weeks of tireless advocacy and pressure that ICE finally released Roxana. Roxana was the victim of racial profiling by the Frederick County Sheriff's Office more than a decade ago and continues to fight to stay in this country.

Just days after Roxana was detained, another CASA member experienced an emergency on the highway when her car caught fire. After seeking help from the police, she was identified as having an old deportation order and transferred to ICE. Another CASA member came to our Tuesday intakes and informed us that after she had been in a car accident, local police had facilitated her transfer to ICE and she is now fighting imminent deportation.

WE ARE CASA

Deplorable conditions, lack of access to medical care, and general mismanagement have led to dozens of deaths in immigration detention over the last several years, including the deaths of seven children.⁵ The COVID-19 pandemic, and rogue nature of Immigration and Customs Enforcement, have made the situation even worse. In June of last year, ICE transferred detainees from across the country to a nearby detention center in Virginia, for the purpose of bringing additionally federal agents into the region to crack down on peaceful protests.⁶ This action led to a massive COVID-19 outbreak at the facility with hundreds infected and one detainee dead.⁷ Although the data is incomplete and hard numbers are difficult to come by, the Vera Institute for Justice has tracked nearly 9,000 cases of COVID-19 in ICE detention as of January 22, 2021.⁸

There is no justification for Maryland facilitating the transfer of its residents to such a dangerous and punitive system, where individuals accused only of *civil* violation are

⁵Morales Rocketto, Jess, *Opinion: Seven Children Have Died in Immigration Custody. Remember Their Names.*, BuzzFeed, September 30, 2019, available at: <https://www.buzzfeednews.com/article/jessmoralesrocketto/remember-their-names>

⁶ Olivo, Antonio and Miroff, Nick, *ICE flew detainees to Virginia so the planes could transport agents to D.C. protests. A huge coronavirus outbreak followed.* Washington Post, September 11, 2020, available at: https://www.washingtonpost.com/coronavirus/ice-air-farmville-protests-covid/2020/09/11/f70ebe1e-e861-11ea-bc79-834454439a44_story.html

⁷ Gathright, Jenny, *Inspection Finds "Systematic" Failings In Farmville Immigrant Detention Center Response to COVID-19 Outbreak*, WAMU, September 10, 2020, available at: <https://wamu.org/story/20/09/10/inspection-finds-systematic-failings-in-farmville-immigrant-detention-center-response-to-covid-19-outbreak/>

⁸ Smart, Noelle and Garcia, Adam, *Tracking COVID-19 in Immigration Detention: A Dashboard of ICE Data*, Vera Institute of Justice, last accessed January 23, 2021, available at: <https://www.vera.org/tracking-covid-19-in-immigration-detention>

subject to deplorable conditions and where their very lives are at risk. Although Maryland can't force the federal government to end immigration detention, it can send a clear message that our state will no longer be complicit in this violation of our residents' basic human rights.

Crucially, SB88 also calls on the Attorney General to work with key stakeholders to develop guidance on enacting policies that protect immigrants seeking to access sensitive locations, like schools, hospitals and courthouses. Although these locations are supposed to be generally shielded from ICE raids, we routinely hear from our members and allies about parents being picked up dropping their United States citizen children off at school, or attending court. In nearby Fairfax, Virginia, we saw ICE even pick up an individual leaving a hypothermia shelter run by a church.⁹ Such unconstrained tactics reveal the inherent lack of compassion in the current enforcement regime and demand a strong response from state and local governments to do whatever possible to protect their immigrant residents.

On the educational front, if parents are afraid to drop their kids off at school, or even send them to school in the first place, because they are afraid ICE will be waiting in the parking lot, then this undermines our state's educational mission and disrupts the school environment for everyone. At a time when Maryland is engaging in a generational investment in our childrens' futures, we cannot allow that laudable goal to be undermined by failing to protect those students and their families from a broken civil immigration enforcement system.

ICE enforcement actions in these sensitive locations also pose a public health risk. If parents or their children are unable to access medical facilities out of fear. If Marylanders don't feel safe accessing treatment in a timely manner there is increased risk that more serious conditions arise, or that infections are spread to other individuals, making communities less healthy and safe. COVID-19 affects us all and we must do everything we can to guarantee that all Marylanders, regardless of immigration status, feel safe accessing care. SB88 will help build the trust that is necessary to make that a reality.

Another example of why this legislation is necessary can be seen in the Trump administration's "public charge" rule, which despite the change in administration, remains in effect as of now – and has already done significant and lasting damage to even lawful immigrants' faith in the health care and public benefits system. This long-standing principle of federal immigration law has historically been applied to prevent immigrants from gaining lawful permanent resident status when they would likely become dependent upon the government as their main source of support. The Trump administration has expanded the rule to prevent anyone who has used – or is likely to use – a broad category of benefits from being eligible to get lawful permanent residence in the United States. This is a blatant attack on the communities that comprise CASA's base – low-income, primarily immigrant communities, where families sometimes need to rely on

⁹Carey, Julie, *ICE Agents Arrest Man Leaving Fairfax County Church Shelter*, NBC4, February 15, 2017, available at: <https://www.nbcwashington.com/news/local/ice-agents-arrest-men-leaving-alexandria-church-shelter/36084/>

some level of government-funded support to make ends meet or ensure that their children have healthy and nutritious food and access to medical care. These changes have already been implemented at U.S. consulates abroad and have led to a more than 300% increase in visa denials based on public charge grounds. In Maryland it is estimated that as many as 385,000 state residents, including 136,000 children, could be negatively impacted by this rule change.

CASA, together with partners from across the state and country, has engaged in a wide-ranging public education campaign to dispel myths about this proposed change and to argue against its implementation. But we cannot reach everyone, and in the end may not be able to stop this misguided policy. What we can, and must, do is ensure that Marylanders can access the benefits their tax dollars pay for without fear of being denied those benefits because of their immigration status. SB88 would help ensure that our immigrant communities feel safe going to the hospital, or seeking other state-funded services that they are eligible for.

CASA's Health and Human Services Department aids thousands of community members each year navigate the complex HHS system. While applying for Health and Human Services many times inquiring about immigration status for the purpose of assessing eligibility is necessary, but serious issues arise when these inquiries are misapplied. This commonly happens when mixed-status families are attempting to apply for services solely on behalf of those that are eligible, especially for their U.S.-born minor children. One cannot submit an application on behalf of a minor child without having an adult as the primary applicant. The system makes it overly cumbersome for mixed status families to opt-out of applying for the benefit for the primary applicant and solely applying on behalf of minor children that are eligible for the public benefit. The system asks several questions about the primary applicant's immigration status, despite them only applying for benefits for the eligible minor child. The system makes these questions required fields to be able to complete the application. These hurdles to apply for vital public benefits for eligible minors, especially in the context of the current political climate, forces some families to forgo critical services for the wellbeing of their minor children.

As the example above illustrate, since President Trump took office in 2017, his administration engaged in a systemic attack on immigrant communities, seeking to sow fear among families and deport as many undocumented members of our communities as possible. CASA has fought back against these assaults on all fronts, including through community organizing and mobilization, engaging in a robust program of Know Your Rights presentations, and through legal actions in federal court. In many of these efforts, we have acted in concert with the State of Maryland. Governor Hogan has come out against some of President Trump's more controversial policies and Attorney General Frosh has joined with Attorneys General from across the country in suing to prevent the administration's unconstitutional actions from going into effect.

Although President Biden will surely work to ameliorate the worst attacks of the Trump administration, he cannot do it alone, and without state action will not go far enough. As noted above, immigration detention and deportation were a core part of the Obama administration, when now-President Biden served as Vice President. We must stand up

for Maryland's immigrants and send a clear message that we value them and afford them the same respect and dignity that we do all other residents of Maryland. We must show through our action that public safety is best served by welcoming immigrants, not throwing them behind bars, and demand that our federal partners do the same.

It is absolutely crucial that Marylanders have faith that interacting with local and state government officials will not be a pipeline to deportation. That is why SB88 is such a crucial piece of legislation. By prohibiting government agents from inquiring about the immigration or citizenship status of an individual, and by banning the use of threats of adverse immigration consequences against individuals for the purpose of coercing information from them, SB88 represents a commitment by the state to protect its residents and ensure they have access to the services they need.

CASA strongly supports SB88 and urges a favorable report from the committee.

