



January 25, 2021

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB0317 (Right to Counsel in Immigration Proceedings); SB0088 (Participation in Federal Immigration Enforcement)

Dear Chairman Smith and Members of the Committee,

On behalf of the Vera Institute of Justice (Vera), we are writing in strong support of SB0088, which would limit police collaboration with ICE, and SB0317, which would establish the right to appointed counsel for detained immigrants and advance universal representation for immigrants facing deportation. Our immigration enforcement and detention system has led to irreparable harm to hundreds of thousands of impacted individuals and communities across the nation and perpetuated racism in our systems and institutions. The bills before you today take important steps toward charting a new vision of justice for immigrant communities. By guaranteeing publicly funded representation in immigration court for all of Maryland's detained residents, SB0317 centers fairness and dignity in a court system that is otherwise dehumanizing and unfair. And by ending local collaborations with ICE, SB0088 would ensure that Maryland state resources are not used to tear our communities and families apart and would reduce the number of people subjected to deportation proceedings in the first place. We urge you to report these bills out favorably.

As you may know, the mission of Vera is to drive change and to build and improve justice systems that ensure fairness, promote safety, and strengthen communities. Over the past fifteen years, Vera's Center on Immigration and Justice has led nationwide efforts to advance universal representation- the concept that every person facing deportation is entitled to zealous legal representation regardless of income, race, national origin, or history with the criminal legal system.

Over the past few years, immigrants have been attacked, criminalized, and ripped apart by federal policies. While these policies did not begin with the prior administration, they took on a particularly deliberate brutality and hostility over the last few years. During this moment of change and opportunity, leaders across all levels of government must renew and double-down on their commitment to protect immigrants and move forward the solutions our communities need, such as SB0317 and SB0088.

In a state such as Maryland, where 2 in 7 children have at least one immigrant parent and 1 in 6 of the labor force is foreign born, support for the immigrant community is support for the Maryland community at large.¹ The bills before you today provide an opportunity for Maryland to invest in its communities and advance a vision of justice for all that centers human dignity.

SB0317:

Vera's SAFE Initiative is a growing movement of communities advancing publicly funded, universal representation for immigrants facing detention and deportation.² Unlike in our criminal legal system, there is no public defender system for people facing the devastating consequences of detention and deportation in immigration court. As a result, most people—including an estimated 70 percent of people in detention—must fend for themselves while facing highly trained government attorneys seeking to deport them. At the core of the universal representation model is a belief that everyone is entitled to due process and to be treated fairly, justly, and with dignity under the law. SB0317 would advance universal representation by guaranteeing the right to appointed legal representation to people detained in Maryland facing deportation and Maryland residents detained out of state, including full-scope representation and collateral proceedings.

Pilot programs in Maryland localities have pioneered universal representation and demonstrated the need for state action. Prince George's County and Baltimore City were two of SAFE's first jurisdictions in 2017 and have remained two of our most important partners and national leaders in the movement for universal representation. These programs have successfully served and strengthened their communities, reuniting families and improving economic prospects for clients. Recently, Prince George's County grew its program – both in funding and capacity - to ensure that the program can reach even more people and have greater community impact. SB0317 would not interrupt these existing and successful local programs. Action from the state, through SB0317, would build on these critical local successes, provide state support for existing programs, and make a defense possible for all detained residents across the state as well as for those detained out of state.

During the pandemic, the stakes for people facing deportation while incarcerated in immigration detention could not be higher, and legal representation can mean the difference between life and death. Detained immigrants face increased public health risks as detention facilities are a vector of the spread of COVID-19.³ Conditions inside detention facilities, where people are crowded in close quarters with limited access to soap and sanitizing agents, create high risk for the rapid spread of this dangerous virus.⁴ As of January 20, 2021, ICE has reported that 8,946 people in

¹ Vera Institute of Justice, *Profile of the foreign-born population in Baltimore, Maryland* (New York: Vera Institute of Justice, 2020), <https://www.vera.org/downloads/publications/profile-of-foreign-born-population-baltimore.pdf>.

² For more information and additional resources, visit <https://www.vera.org/initiatives/safe-initiative>

³ Vera Institute of Justice, *COVID-19: Criminal Justice Responses to the Coronavirus Pandemic*, (New York: Vera Institute of Justice, 2020), <https://www.vera.org/projects/covid-19-criminal-justice-responses/covid-19-data>

⁴ Erica Bryant, *Detention May Become Death Sentence for Vulnerable Detainees*, Vera Institute of Justice, March 25, 2020, <https://www.vera.org/blog/covid-19-1/detention-may-become-death-sentence-for-vulnerable-detainees>.

detention have tested positive for COVID-19 across 126 facilities, an increase of over 1,700 positive cases since November, despite decreasing numbers of people in detention during this time. At any point between March 14, 2020 and January 2, 2021, a total of 110,141 people have been detained by ICE. Estimates published by Vera suggest ICE is severely underreporting the prevalence of COVID-19 in detention. At the time our epidemiological model was published, we estimated the true number of people in ICE detention with COVID-19 to be as much as 15 times higher than official numbers.⁵ The threat to the health of detained immigrants, detention staff, and surrounding communities continues to compound, deepening the crisis and thwarting communities' efforts to stem the spread of the virus.⁶

Winning freedom from detention has never been more critical. Lawyers provided as part of universal representation programs have been fighting tirelessly on behalf of those detained, even as ICE continued to irresponsibly arrest community members and resist public calls for humanitarian release. Attorneys in Maryland, including the Capital Area Immigrant Rights (CAIR) Coalition, work in coordination with CASA and as part of the emergency response network for immigrant communities, fighting for the health, safety, and dignity of their clients amid COVID-19. While the new federal administration is taking steps to ameliorate some of the harms inflicted on immigrant communities, the prior administration instituted more than 400 anti-immigrant policies and appointed hundreds of immigration judges. Reversing that harm will only be possible with dedicated legal advocacy. Ensuring that immigrants can benefit from new opportunities to obtain release from detention and lawful status to remain in the United States will also require legal representation to understand and exercise any new legal options.

Although the need is particularly acute during a pandemic, universal representation is critical so long as community members face the detention and deportation machinery. The consequences of deportation proceedings – exile from family and community and possible harm or death in the country of origin – are dire; without representation, detained immigrants languish in detention and are only likely to win their cases – and the opportunity to remain lawfully in the United States – two percent of the time.⁷ And yet, less than half of detained individuals appearing at the two local Immigration Courts (Baltimore and Arlington) are represented, reflecting only slightly higher representation rates than those seen nationwide, where nearly 70 percent go unrepresented.⁸

⁵ Dennis Kuo, Noelle Smart, Zachary Lawrence, and Adam Garcia, *The Hidden Curve: Estimating the Spread of COVID-19 among People in ICE Detention* (New York: Vera Institute of Justice, 2020), 3, <https://perma.cc/2TT2-32GA>.

⁶ For additional information see Gregory Hooks, *The Early Arrival of COVID-19 in Counties and Regions with Large Prison and Jail Populations*, (Northampton, MA: Prison Policy Institute, 2020), https://www.prisonpolicy.org/reports/covidspread_timing.html

⁷ Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court (Special Report)*, (Washington, DC: American Immigration Council, 2016), 19, https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

⁸ The representation rate in immigration court fluctuates slightly over time. Historically, 81 percent of detained immigrants have lacked representation— between October 2000 and November 2019, 81

Representation makes a significant difference. Immigrants who are represented are 3.5 times more likely to be released from detention on bond and up to 10 times more likely to establish a right to remain in the United States.⁹ Despite increasingly steep odds in immigration court proceedings, 35 percent of SAFE clients whose cases have been completed thus far have won the right to remain in the United States.¹⁰

In addition, representation returns dignity to an otherwise cruel and unjust process, and it helps keep families, businesses, and communities together. People helped through universal representation programs like those of the SAFE Initiative are deeply entrenched members of our workplaces and communities. SAFE clients have lived in the United States for an average of 14 years.¹¹ Seventy-seven percent of SAFE clients and 92 percent of SAFE Maryland clients are the primary breadwinners for their families.¹² The impact of SAFE in its first three years make clear the stark reality: without counsel, many SAFE clients who have a right to remain in the United States would instead have been deported, separated from their families and homes, or forced to return to the very conditions from which they fled to seek protection.

By ensuring equal access to due process for all, SB0317 is also critical to necessary state efforts to address systemic racial injustice. The racial biases and inequities that plague our criminal legal system pervade the immigration system. Black immigrants, who are more likely to be stopped, arrested, and incarcerated, are disproportionately funneled into the immigration enforcement system as a result of that contact with the criminal justice system.¹³ Publicly funded deportation defense programs keep together families and serve communities who are criminalized and targeted by over-policing and increased immigration enforcement. They help secure the release of people from detention, seek to disrupt the pipeline between the criminal and immigration systems, restore due process, and build community trust.

Universal representation is also widely supported by the public. A recent national poll conducted by the Vera Institute in partnership with Lucid found an overwhelming 67 percent of people in the United States support government-funded lawyers for immigrants facing

percent of all people in detention had never been represented (1,237,252 of 1,526,419 cases). The rate has improved slightly over the past two decades, with approximately 70 percent unrepresented in recent years—between October 2012 and November 2019, 70 percent of all people in detention had never been represented (327,828 of 466,756 cases), with the exact percentage varying slightly from year to year. *See* Transactional Records Access Clearinghouse (TRAC), “Details on Deportation Proceedings in Immigration Court,” accessed January 13, 2020.

⁹ Ingrid V. Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review* 164, no. 1 (2015), 9, <https://perma.cc/7J65-CZCM>.

¹⁰ Vera Institute of Justice, *Rising to the Moment: Advancing the National Movement for Universal Representation (Years 1-3 of the SAFE Initiative)* (New York: Vera Institute of Justice, 2020), 9, <https://www.vera.org/downloads/publications/rising-to-the-moment.pdf>

¹¹ *Id.* at 22

¹² *Ibid.*

¹³ Jeremy Raff, “The ‘Double Punishment’ for Black Undocumented Immigrants,” *Atlantic*, December 30, 2017, <https://perma.cc/R7UZMKF7>

deportation.¹⁴ Locally 71% of people in the Baltimore metropolitan area support government funded attorneys for immigrants facing deportation.¹⁵

Jurisdictions across the country this year have similarly moved forward and expanded funding for deportation defense, ensuring that vulnerable neighbors are not left behind when support is needed the most. Most recently, Governor Cuomo proposed full funding of New York State's immigrant legal services program, including the similar New York Family Unity Project (NYIFUP) project for FY22.¹⁶ New Jersey doubled its state deportation defense fund to \$6.2¹⁷ million; Harris County, TX¹⁸ invested \$2.5 million to establish a new program; and Denver, CO¹⁹ more than doubled its fund this year because of the increased need for legal services amid the pandemic.²⁰ These national efforts are a resounding affirmation of the success of universal representation pilot programs and the role of local and state government in ensuring protections of its communities. The state of Maryland has a critical opportunity now to expand and guarantee access to representation for immigrant residents, leading the growing national movement of universal representation.

SB0088:

Representation alone is not enough to address systemic issues and structural racism pervasive throughout the detention and deportation machinery. By limiting police partnership and collaboration with ICE and other federal immigration enforcement agencies, including through Section 287(g) agreements, SB0088 ("Trust Act") is crucial to limiting the number of people who are ensnared with detention in the first place. Limitations on police and ICE collaboration have the further benefit of ensuring local resources are not used for federal immigration enforcement.

The most insidious elements of the criminal legal system are amplified when immigrants come into contact with law enforcement. As the disparate racial impacts of policing, and the criminal legal system more generally, cascade into the immigration system, immigrants of color feel the

¹⁴ Lucila Figueroa and Nina Siulc, *It's Time to Provide Government Funded Lawyers to All Immigrants Facing Deportation*, Vera Institute of Justice, January 14, 2021, <https://www.vera.org/blog/its-time-to-provide-government-funded-lawyers-to-all-immigrants-facing-deportation>.

¹⁵ Based on a forthcoming report by the Vera Institute of Justice.

¹⁶ *Governor Cuomo Outlines FY2022 Executive Budget*, Press Release (January 19, 2021), available at <https://www.budget.ny.gov/pubs/press/2021/fy22-exec-budget.html>.

¹⁷ See NJ FY21 Appropriations Handbook, Pg. B-1234; NJCFS Account No. 21--100--054--7500--536, available at <https://www.nj.gov/treasury/omb/publications/21approp/FY21FullAppropAct.pdf>

¹⁸ Zach Despart, "Harris County Oks \$2.5M to help poor immigrants fight deportations," *Houston Chronicle*, Nov. 10, 2020, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-OKs-2-5M-to-help-poor-immigrants-15717330.php>.

¹⁹ See Denver Mayor's City Budget Volume 1, pg. 266, 2020 Budget Impact of COVID-19 and Mid-year Reductions (An increase in services and supplies to increase funding for the Immigrant & Refugee Affairs Legal Services Fund), available at https://www.denvergov.org/content/dam/denvergov/Portals/344/documents/Budget/2020/2020BudgetBook_Vol1-2-3.pdf.

²⁰ To see a map of all publicly funded deportation defense programs nationwide, visit www.vera.org/safe-initiative.

double oppression that comes from over-policing from both law enforcement and immigration enforcement. Research suggests that just as Black people are more likely than white people to be targeted by police, Black immigrants are also disproportionately vulnerable to immigration enforcement and deportation.²¹

SB0088 would help to dismantle the harmful arrest to deportation pipeline by preventing law enforcement from inquiring about immigration status, detaining on behalf of ICE, and notifying and transferring an individual to federal immigration authorities for the purpose of enforcement without a judicial warrant. SB0088 also requires the Attorney General to create guidance on immigration enforcement on the premises of “sensitive” locations, like schools, hospitals, and courthouses.

Section 287(g) agreements and other efforts that deputize local authorities as ICE agents perpetuate dangerous structural racism intrinsic to the immigration and criminal legal systems. Since its inception, studies have shown 287(g) collaborations to lead to racial profiling, increased policing and enforcement of immigrant communities, and have undermined public safety.²² In a study on the effects of local jail expansion on immigration enforcement in Alamance County, North Carolina, for example, Vera found that after the county joined 287(g) in 2006, between 2008 and 2013, Latinx people were six times more likely to be pulled over by the Alamance County Sheriff’s Department than non-Latinx people. The same report highlights that an organizer with a local activist group “estimates that this new collaboration eventually resulted in 10 percent of the Latinx community being deported during that period.”²³

Local collaboration with immigration authorities has long been problematic, but amid the spread of COVID-19, enforcement and frequent movement and transfers of individuals in and out of jails and detention facilities especially carries dangerous public health consequences. Indeed, an Arkansas Sheriff recently ended a 287(g) agreement because of concerns of increased transmission of COVID-19.²⁴

In addition, studies show that 287(g) programs do not actually keep communities safe- rather, they undermine public safety by instilling fear in and distrust by immigrants, making them less

²¹ Juliana Morgan-Trostle and Kexin Zheng, *The State of Black Immigrants—Part II: Black Immigrants in the Mass Criminalization System* (New York: Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, 2016), 20, <https://perma.cc/NHM8-CFFZ>.

²² Randy Capps, Marc Rosenblum, Cristina Rodriguez and Muzaffar Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, (Washington, D.C.: Migration Policy Institute, 2011), <https://www.migrationpolicy.org/sites/default/files/publications/287g-divergence.pdf>.

²³ Oliver Hinds and Jack Norton, *No Chance Alamance*, (New York: Vera Institute of Justice, 2020) <https://www.vera.org/in-our-backyards-stories/no-chance-alamance>.

²⁴ *Washington County Sheriff’s Office suspends the 287(g) Program due to coronavirus concerns*, 5News, Washington County, Arkansas (April 17, 2020), <https://www.5news.com/article/news/local/washington-county-sheriffs-department-suspends-287-g-prgram-coronavirus/527-d3dcdd68-6421-4be7-97c0-5a54d45866f7>

likely to report crimes that they witnessed or experienced.²⁵ A 2011 study by the Migration Policy Institute found that about half of 287(g) activity involved noncitizens arrested for misdemeanors and traffic offenses.²⁶ In Frederick County, at least 80% of the 287(g) arrests were for low-level offenses and over 60% were for traffic offenses in FY10.²⁷

Finally, local collaboration with federal immigration enforcement is costly for communities. Budgets are moral documents, representing priorities of our communities' needs and values. State and local governments shoulder the majority of costs associated with 287(g) agreements, including training, salaries and overtime for policing work performed in furtherance of federal immigration enforcement, and detention.²⁸ Additional costs include legal liability common to 287(g) enforcement as well as the public health impacts.²⁹ Instead of diverting local resources for federal immigration enforcement that harms and criminalizes our communities, it is time for the state to ensure that state and local resources are invested in programs that protect and support communities, like universal representation.

When Vera's SAFE Initiative was launched in 2017, jurisdictions across the country like Denver and Philadelphia, stood up deportation defense programs as part of broader local efforts to stand up for immigrant rights, including sanctuary measures that ended Section 287g participation and local collaboration with ICE. We are now at another pivotal juncture for the future of immigrant justice and state efforts to provide for immigrant protections will continue to shape the course of our national movement for universal representation, racial equity, and an end to the criminalization of immigrants.

We urge your support of SB0088 and SB0317 so that the State of Maryland leads a roadmap for action for immigrant communities, public investment in its communities, and a new vision of justice.

Thank you for your consideration. Please feel free to reach out to me at clazar@vera.org or (917) 923 6847 for additional questions or information.

²⁵ Laura Muñoz Lopez, *How 287(g) Agreements Harm Public Safety*, (Washington, D.C.: Center for American Progress, 2018), <https://www.americanprogress.org/issues/immigration/news/2018/05/08/450439/287g-agreements-harm-public-safety>.

²⁶ Randy Capps, Marc Rosenblum, Cristina Rodriguez and Muzaffar Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, (Washington, D.C.: Migration Policy Institute, 2011), 2, <https://www.migrationpolicy.org/sites/default/files/publications/287g-divergence.pdf>.

²⁷ *Id.* at 56.

²⁸ Laura J.W. Keppley, *287(g) Agreements: A Costly Choice for Localities* (Washington, D.C.: Niskanen Center, 2020), <https://www.niskanencenter.org/287g-agreements-a-costly-choice-for-localities/>.

²⁹ See for example, Dominique Maria Benessi, "ACLU Settles Discrimination Lawsuit with Frederick County Over Immigration Enforcement", *dcist*, Jan 21, 2021, <https://dcist.com/story/21/01/21/aclu-settles-lawsuit-frederick-county-sheriff-discrimination>

Sincerely,

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cc: Vice Chair Waldstreicher
Senator Bailey
Senator Carter
Senator Cassilly
Senator Hettelman
Senator Hough
Senator Jackson
Senator Lee
Senator Sydnor
Senator West