



March 1, 2021

The Honorable Luke Clippinger
Chair, House Judiciary Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

RE: HB0750 - Office of the Attorney General - Right to Counsel in Immigration Proceedings
Coordinator

Dear Chairman Clippinger and Members of the Committee,

On behalf of the Vera Institute of Justice (Vera), we are writing in strong support of HB0750, which would establish the right to appointed counsel for detained immigrants and advance universal representation for immigrants facing deportation. By guaranteeing publicly funded representation in immigration court for all of Maryland's detained residents, HB0750 centers fairness and dignity in a court system that is otherwise dehumanizing and unfair. We urge you to report this bill 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.

Background:

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 HB0750.

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. HB0750 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.

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.

Increased Need for Representation:

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-19.¹ 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.² As of January 20, 2021, ICE has reported that 8,946 people in 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.³ 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.⁴

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

¹ 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>

² 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>.

³ 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>.

⁴ 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

network for immigrant communities, fighting for the health, safety, and dignity of their clients amid COVID-19.

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.⁵ 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.⁶

Maryland’s Local Universal Representation Programs:

Vera’s SAFE Initiative is a growing movement of communities advancing publicly funded, universal representation for immigrants facing detention and deportation.⁷ 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. HB0750 would not interrupt these existing and successful local programs. Action from the state, through HB0750, 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.

Why Universal Representation?

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

⁵ Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court (Special Report)*, (Washington, DC: American Immigration Counsel, 2016), 19, https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

⁶ 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 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.

⁷ For more information and additional resources, visit <https://www.vera.org/initiatives/safe-initiative>

right to remain in the United States.⁸ 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.⁹

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.¹⁰ Seventy-seven percent of SAFE clients and 92 percent of SAFE Maryland clients are the primary breadwinners for their families.¹¹ 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, HB0750 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.¹² 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.

The Movement for Universal Representation:

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 FY22.¹³ New Jersey doubled its state deportation defense fund to \$6.2¹⁴

⁸ 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>.

⁹ 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>

¹⁰ *Id.* at 22

¹¹ *Ibid.*

¹² Jeremy Raff, "The 'Double Punishment' for Black Undocumented Immigrants," *Atlantic*, December 30, 2017, <https://perma.cc/R7UZMKF7>

¹³ *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>.

¹⁴ 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>

million; Harris County, TX¹⁵ invested \$2.5 million to establish a new program; and Denver, CO¹⁶ more than doubled its fund this year because of the increased need for legal services amid the pandemic.¹⁷ 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.

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 deportation.¹⁸ Locally 71% of people in the Baltimore metropolitan area and 83% of people in Prince George's County, MD, support government funded attorneys for immigrants facing deportation.¹⁵

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. We urge your support of HB0750 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 for additional questions or information.

Sincerely,



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¹⁵ 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>.

¹⁶ 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.

¹⁷ To see a map of all publicly funded deportation defense programs nationwide, visit www.vera.org/safe-initiative.

¹⁸ 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>.

Vera

INSTITUTE OF JUSTICE

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Delegate Bartlett
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Delegate Cox
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