



February 1, 2022

Re: Testimony in Support of Access to Counsel in Immigration Proceedings (HB114/SB129)

Dear Chair Smith, Jr., Vice Chair Waldstreicher & Members of the Senate Judicial Proceedings Committee:

Asian Americans Advancing Justice | AAJC writes to express our strong support for the Access to Counsel in Immigration Proceedings bill (HB114/SB129) and urge you to pass the bill out of committee. Individuals in deportation proceedings do not have the right to government-funded counsel leaving thousands of people to represent themselves pro se. This has devastating consequences for immigrants in deportation proceedings. Immigrants with lawyers are 10.5 times more likely to win their cases,¹ and yet an alarming 81% of detained immigrants in Maryland had no legal representation in their case.² SB129 would provide indigent immigrants with their due process right to counsel and ensure that persons and their families are aware of their rights and receive adequate support.

Advancing Justice | AAJC works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. Founded in 1991, Advancing Justice | AAJC is one of the nation's leading experts on civil rights issues of importance to the Asian American community including immigration and immigrants' rights, census, hate incidents, language access, technology, and telecommunications, and voting rights.

Immigration is an important issue to Asian Americans. 92% of Asian Americans are immigrants or the children of immigrants. Maryland is home to over 415,000 Asian Americans making up 7% of the population. Around 266,000 of them are immigrants, and around 39% of Maryland's Asian American population are limited English proficient. Overall, 15% of Marylanders are immigrants, and nearly 275,000 Marylanders are undocumented.³ Asian immigrants are often overlooked in the discussion of undocumented migration and immigration enforcement. However, there are around 35,000 undocumented Asian immigrants living in Maryland.

The government has a long history of criminalizing and detaining Asian immigrants, their families, and their communities. One of the worst examples of detention was the incarceration of

¹ Teresa Wiltz, *By law, if you're charged with a crime in the U.S., you have a right to counsel, no matter your ability to pay. That's not the case in immigration court.*, HUFFPOST (November 9, 2017), available at https://www.huffpost.com/entry/amid-immigration-crackdown-cities-step-in-with-free_b_5a046701e4b055de8d096af0 (last visited January 30, 2022).

² *Prince George's County Pledges Half of a Million Dollars Towards Access to Counsel for Detained Immigrants*, IMMIGRANT JUSTICE CORPS (June 25, 2020), available at <https://justicecorps.org/news/prince-georges-county-pledges-half-a-million-dollars-towards-access-to-counsel-for-detained-immigrants/> (last visited January 30, 2022).

³ All data in this testimony related to Asian Americans residing in Maryland can be found at aapidata.com.

120,000 Japanese Americans during World War II.⁴ Based simply on their ancestry, Japanese Americans were incarcerated, resulting in around 2,000 deaths from a series of causes including infectious diseases, bad sanitation, or even shooting by guards.⁵ Children were not spared this association of guilt based on ancestry, and over 5,000 American babies were born in detention.⁶ Fathers, mothers, and children were rounded up and forced to leave their homes and move into detention centers behind barbed wire and reduced to numbers on tags.⁷

This legacy of criminalizing and holding in custody immigrant communities continues to this day. Asian immigrants make up a significant portion of the population of detained immigrants nationally. As of June 2018, there were as many as 4,881 Asian immigrants in detention out of 50,000 total at the time.⁸ Many of them were asylum seekers who were seeking protection in the United States under our asylum laws. The majority of Asian immigrants detained were from India, China, Bangladesh, Nepal, Iraq, Vietnam, and Pakistan.⁹ Indian immigrants alone made up almost half of all detained Asian immigrants.¹⁰ Our current detention system impacts not only asylum seekers, but also immigrants including long-time members of our communities, lawful permanent residents (LPRs), and family members of U.S. citizens. Within the Asian American community, Southeast Asian refugees have been notably targeted. There are 17,000 Southeast Asian lawful permanent residents living with a final order of removal.¹¹ In June 2018, about 43% of Vietnamese Americans detained lived in the United States for over two decades.¹² The percentage of Lao and Cambodian Americans detained who lived here for over twenty years is even higher at 86% and 75%, respectively.¹³ Moreover, Filipinos have the second highest

⁴ See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment of Americans of Japanese ancestry); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review); see also *Preserving Japanese American stories of the past for the generations of tomorrow.*, DENSHO, available at <https://densho.org/>.

⁵ *Medical care in camp*, DENSHO, available at <https://densho.org/>; see also Gisela Perez Kusakawa, *The Korematsu Legacy: "Standing up for what is right!"*, MEDIUM (Jan 30, 2020), available at <https://medium.com/advancing-justice-aajc/the-korematsu-legacy-stand-up-for-what-is-right-4a19c5af491d>.

⁶ *Id.*

⁷ See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment of Americans of Japanese ancestry); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review).

⁸ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, *INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES* 63 (2019) (citing TRAC, "Immigration and Customs Enforcement Detainees."), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

⁹ *Id.*

¹⁰ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, *INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES* 63 (2019) (citing Parvini, "Growing Number of California Detainees"; PTI, "2,382 Indians Languishing in U.S. Jails for Illegally Crossing Border," *Economic Times of India* (November 12, 2018)), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

¹¹ *SEARAC Denounces Scheduled Deportation over 50 Cambodian Americans*, SEARAC (July 1, 2019), <https://www.searac.org/immigration/searac-denounces-scheduled-deportation-of-over-50-cambodian-americans/> (last visited September 25, 2019).

¹² ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, *INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES* 64 (2019) (citing TRAC, "ICE Detainees"), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

¹³ *Id.*

number of ICE arrests in between 2015 and 2018, and the highest number of deportations between 2017 and 2018 among Southeast Asians.¹⁴ In 2020 alone, more than 900 Filipinos have new deportation proceedings filed.¹⁵ Southeast Asian households who have a family member that is detained face family separation and the continued hardship of not knowing whether their families will be able to reunite or be separated indefinitely.¹⁶

Immigrants in deportation proceedings lack resources, due process, and access to legal counsel. Immigrants who are detained and in removal proceedings do not have the right to counsel at the government's expense.¹⁷ This leaves indigent immigrant populations vulnerable,¹⁸ and they are forced to handle the intricacies and complications of the U.S. immigration system alone before a judge and an opposing DHS attorney. Moreover, detained immigrants face severe logistical challenges in accessing legal resources. For example, about 30% of immigrants detained in ICE facilities are more than one hundred miles from the nearest government-listed legal aid provider.¹⁹ The representation rate for detained immigrants was only 14% between 2007 and 2012.²⁰ This representation rate is even lower at 10% for detained immigrants in a small city or rural area.²¹ This lack of representation makes all the difference in court. Providing legal representation to detained immigrants in Maryland would change lives in determining whether families stay together or are torn apart.

We thank you for holding a hearing on this important bill and urge you to vote for it. Please feel free to contact me with any questions at gkusakawa@advancingjustice-aaajc.org.

Sincerely,

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¹⁴ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 63 (2019).

¹⁵ Data available at Transactional Records Access Clearinghouse.

¹⁶ National Asian Pacific American Women's Forum & Southeast Asia Resource Action Center, "Dreams Detained in Her Words: The Effects of Detention and Deportation on Southeast Asian American Women and Families," https://www.searac.org/wp-content/uploads/2018/09/dreams_detained_in_her_words_report-2.pdf.

¹⁷ Ingrid Eagly & Steven Shafer, "Access to Counsel in Immigration Court," (Sept. 28, 2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

¹⁸ *Id.*

¹⁹ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 62 (2019) (citing Ingrid Eagly and Steven Shafer, "Access to Counsel in Immigration Court," American Immigration Council (September 28, 2016); Kyle Kim, "Immigrants Held in Remote ICE Facilities Struggle to Find Legal Aid before They're Deported," Los Angeles Times (September 28, 2017)), available at https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

²⁰ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 62 (2019) (citing Ingrid Eagly and Steven Shafer, "Access to Counsel in Immigration Court," American Immigration Council (September 28, 2016); Kyle Kim, "Immigrants Held in Remote ICE Facilities Struggle to Find Legal Aid before They're Deported," Los Angeles Times (September 28, 2017)), available at https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

²¹ *Id.*