

February 1, 2022

Chairman William C. Smith, Jr.
Senate Committee on Judicial Proceedings
11 Bladen Street Room 2 East Wing
Annapolis, MD

RE: Senate Bill 129, Access to Counsel in Immigration Proceedings Program

Dear Chairman Smith and Members of the Committee,

On behalf of the Vera Institute of Justice (Vera), we are writing in strong support of SB129, which would provide Maryland residents in immigration detention access to legal representation. The Access to Counsel bill would ensure that Marylanders have access to due process and an opportunity to remain with their families, regardless of where they are held in ICE custody. It would center fairness and dignity in a court system that is otherwise dehumanizing and unfair. We urge you to report this bill out favorably.

Vera's mission is to end the overcriminalization and mass incarceration of people of color, immigrants, and people experiencing poverty. We work to transform the criminal legal and immigration systems until they are fair for all. Over the past fifteen years, Vera has led nationwide efforts to advance universal representation - the concept that, much like the public defender system in criminal court, every person facing deportation is entitled to a zealous legal defense regardless of income, race, national origin, or history with the criminal legal system.

Background:

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 in recent years. As we continue to face societal reckonings with racism and as the impacts of COVID-19 crisis have converged with decades of criminalization and systemic racism, the need for universal representation continues to grow.

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.

Vera's SAFE Network is a growing movement of communities advancing publicly funded, universal representation for immigrants facing detention and deportation. SAFE partners with 23 jurisdictions to launch defense programs in collaboration with government leaders, legal service providers, and community advocates, and utilizes data and evidence from these programs to evaluate impact and best practices. 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.

Senate Bill 129 would build on these critical local successes. It would advance universal representation by providing state support for legal representation to Marylanders facing deportation and in immigration detention, including full-scope representation and collateral proceedings, to the many Marylanders facing detention and deportation who are not eligible to be served under these local programs. The bill promotes program design and implementation that reflects [best practices and lessons learned](#) from years of effective implementation of these programs in Maryland and across the country and addresses the needs of Maryland residents faced with a cruel and evolving detention landscape.

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 right to remain in the United States.¹ 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.² Without representation, detained immigrants languish in detention and are only

¹ 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>.

² 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>

likely to win their cases – and the opportunity to remain lawfully in the United States – two percent of the time.³

In addition, representation returns some semblance of 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 Network are deeply entrenched members of our workplaces and communities. SAFE clients have lived in the United States for an average of 14 years.⁴ Seventy-seven percent of SAFE clients and 92 percent of SAFE Maryland clients are the primary breadwinners for their families.⁵ The impact of SAFE in its first three years make clear the stark reality: without counsel, many SAFE clients and Marylanders 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 – simply because they cannot afford an attorney.

By ensuring equal access to due process for all, SB129 is also critical to necessary state efforts to address systemic racial injustice. The racial biases and inequities that plague the 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.⁶ Publicly funded deportation defense programs serve as a critical safeguard in a largely unchecked pipeline between the criminal and immigration systems, ensuring that communities that are criminalized and targeted by over-policing and increased immigration enforcement are not erroneously detained or deported by virtue of that increased exposure. They help secure the release of people from detention, restore due process, and build community trust.

Increased Need for Representation:

The largest COVID-19 outbreak in immigration detention in the history of the pandemic is happening now. As of January 19, 2021, there were 2,224 confirmed cases, surpassing the previous maximum confirmed cases reported in detention in

³ 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_migration_court.pdf.

⁴ *Id.* at 22.

⁵ *Ibid.*

⁶ Jeremy Raff, “The ‘Double Punishment’ for Black Undocumented Immigrants,” *Atlantic*, December 30, 2017, <https://perma.cc/R7UZMKF7>

May 2021. And the latest spike is drastic- just one month ago, ICE reported 220 confirmed cases in detention.⁷ 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 the COVID-19.⁸

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.

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.

The Movement for Universal Representation

Over fifty politically diverse jurisdictions across the country have now stood up publicly funded deportation defense programs, including 8 states.⁹ In just the past year, the states of Colorado and Nevada enacted legislation to establish new statewide funds for deportation defense and the state of New Jersey grew its universal representation program. New York Governor Hochul proposed increased funding of \$12 million to New York State’s immigrant legal services program, while the legislature is similarly considering legislation to establish the right to appointed counsel for New Yorkers facing deportation. These national efforts are a resounding affirmation of the need for and success of universal representation programs and the role of state government in ensuring these protections for its communities.

⁷ See Tracking COVID-19 in Immigration Detention, Vera Institute of Justice, <https://www.vera.org/tracking-covid-19-in-immigration-detention>.

⁸ 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>

⁹ The states include California, New York, Oregon, Washington, Illinois, New Jersey, Colorado, Nevada.

Universal representation is also widely supported by the public. An overwhelming 67 percent of people in the United States support government-funded lawyers for immigrants facing deportation.¹⁰ 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.¹¹

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 SB129 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.

Sincerely,



Elizabeth Kenney
Associate Director, SAFE Initiative
Vera Institute of Justice

¹⁰ Vera Institute of Justice, Taking the Pulse: Public Support for Government-Funded Attorneys in Immigration Court (New York: Vera Institute of Justice, 2020), <https://www.vera.org/publications/taking-the-pulse>.

¹¹ Vera Institute of Justice, “Public Support in Baltimore, MD, for Government-Funded Attorneys in Immigration Court,” February 2021, <https://www.vera.org/downloads/publications/taking-the-pulse-baltimore.pdf>; “Public Support in Prince George’s County, MD, for Government-Funded Attorneys in Immigration Court,” February 2021, <https://www.vera.org/downloads/publications/taking-the-pulse-prince-georges-county.pdf>.