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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB 114**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 1/25/2022**

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on House Bill 114.

The Maryland Access to Counsel in Immigration Proceedings program established by HB 114 is urgently needed to protect vulnerable, indigent Maryland residents, and their families. Hundreds of Maryland's children each year are at substantial risk of permanent separation from their parents due to ICE's enforcement actions. Those parents are held in ICE custody in Maryland, or other jails, with no viable opportunity to post bond for release. If a parent loses their immigration hearing – a loss that is exponentially more likely without an attorney – the parent will be deported from the United States. A result that the U.S. Supreme Court has long-equated with “banishment or exile.”<sup>1</sup>

ICE may arrest and detain anyone who is not a U.S. citizen based on ICE's belief that the person is deportable, including asylum applicants and long-time lawful permanent residents (“green card” holders).<sup>2</sup> ICE detainees -- including many asylum-seekers who have no criminal convictions -- are held in the same jails as those facing criminal trials or serving sentences, even though the ICE detainees may have had no contact with the criminal justice system.

Many ICE detainees had decades of productive work history and peaceful family life in Maryland, with extensive community contacts. No criminal conviction is required for ICE to deport an undocumented person. Having a U.S. citizen spouse or child does not by itself prevent deportation. When the parent is deported, this permanent exile often means the family bread-winner is permanently gone. A parent's deportation puts huge burdens on public support programs and in the worst situation, on the state's foster care system.

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<sup>1</sup> *Padilla v. Kentucky*, 130 S.Ct. 1473, 1484 (2010); *Delgado v. Carmichael*, 332 U.S. 388, 390-91 (1947).

<sup>2</sup> The immigration statute, 8 USC 1226(a) says that any noncitizen “may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States.” Further, subsection 8 USC 1226(c) says that ICE “shall” take into custody any noncitizen who was convicted of any of a very broad range of offenses, including simple possession of a small amount of marijuana. These provisions have been interpreted to mean that immigration judges do not have authority to set bonds for people held in this “mandatory detention.” *Demore v. Kim*, 538 U.S. 510 (2003).

The notable increase of an individual person's likelihood of success in immigration court -- of not being separated from their home and family -- when represented by counsel has been well-documented by researchers. For example, the Vera Institute of Justice reports that:

*It is nearly impossible to win deportation cases without the assistance of counsel. Only 5 percent of cases that won between 2007 and 2012 did so without an attorney; 95 percent of successful cases were represented.*<sup>3</sup>

Appointing a lawyer to ICE detainees through this program would serve only indigent Marylanders who are not otherwise represented by counsel. Of course detainees and their families would be free to retain private immigration attorneys. This program would not assist detainees who are able to hire private attorneys.

Unfortunately, few private attorneys are willing, capable, and financially able to represent clients who are in ICE custody. Immigration law is vastly complicated, often being equated to tax law. Deportation defense is a subspecialty requiring even more specialized expertise. Practitioners need an intricate knowledge of numerous bases for deportation, case law interpretations, asylum case law, and the details of other defenses to deportation. Few private attorneys find the field practically or financially feasible, especially with the extra burdens of working with clients in ICE custody.

To provide high-quality representation, the Maryland Legal Services Corporation, acting as Coordinator of this program, will assign indigent detainees' cases to Designated Organizations, whose staff have the expertise and the demonstrated capacity to provide high-quality legal representation to these vulnerable individuals.

Our office does not represent individuals in immigration proceedings. Under the obligations imposed by *Padilla v. Kentucky*, we do provide individualized advice to our clients of potential immigration consequences of their criminal charges and convictions. That is where our service ends, however. Our former clients are left on their own in immigration court. ICE is represented in each case by an experienced attorney employed by the U.S. Department of Homeland Security. A few fortunate detainees are represented by the CAIR Coalition, under grants in similar programs from Prince George's County and Baltimore City,<sup>4</sup> but the vast majority lack counsel in these quasi-criminal proceedings and remain in jail throughout their deportation hearings.

For these reasons, the Maryland Office of the Public Defender strongly urges this Committee to issue a favorable report on HB 114.

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

**Written by: Nadine Wettstein, Director, OPD Immigration Division**

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<sup>3</sup> Why Does Representation Matter? The Impact of Legal Representation in Immigration Court. <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf>. See also Eagly and Shafer: [https://www.americanimmigrationcouncil.org/sites/default/files/research/access\\_to\\_counsel\\_in\\_immigration\\_court.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf)

<sup>4</sup> SB 317 anticipates respecting and coordinating with these pre-existing programs, and directing the relevant funding to those programs.