

To: House Judiciary Committee

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Re: In SUPPORT of House Bill 114

Date: February 2, 2022

Testimony in Support of House Bill 114

House Bill 114 will establish the right to counsel for immigrants currently in deportation proceedings in Maryland. This legislation extends due process protections to vulnerable members of Maryland's community, including immigrants who are victims of crime. Because our current system does not provide the right to counsel in deportation proceedings, many immigrants, including those who have been trafficked to the United States or have experienced other types of violence, who may have a legal basis to remain in the United States, are deported simply because they can't afford an attorney to help them navigate particularly complex immigration proceedings.

The right to counsel, as afforded under the U.S. Constitution's Sixth Amendment, only applies in criminal proceedings. Because immigration cases are civil proceedings, immigrants facing deportation are not extended the right to counsel, despite the high stakes involved in removal proceedings—including permanent separation from family and commonly, life-threatening risks in their home countries. The consequences of a ruling from an immigration court is arguably as serious as those at issue in criminal proceedings.

Legal representation helps ensure due process in immigration court. Many people in deportation proceedings have valid legal claims to remain in the United States but cannot argue their cases effectively for themselves absent legal expertise. Lawyers are especially critical in cases where immigrants are detained until the final outcome of their case. The physical constraints associated with detention mean unrepresented people face serious obstacles in obtaining even the most basic evidence and paperwork they need to substantiate their legal claims.

The Justice for Victims of Crime Clinic represents several clients seeking status in the United States based on their own victimization. United States law recognizes that we have an obligation to protect immigrants who are victims of trafficking and/or certain crimes of violence once they arrive here, regardless of their initial immigration status. Providing a pathway to legal status not only protects victims of crime, but it encourages them to cooperate with authorities in the prosecution of individuals who pose a danger to our community. The United States has recognized the importance of assisting victims of trafficking and other crimes by creating the T and U visa processes, respectively. Illegal entry into the United States and pending deportation proceedings do not bar individuals from applying for a T or U visa. Unfortunately, many individuals who may be eligible for this type of relief do not know that the law may provide a pathway to adjust their immigration status or provide a defense in active deportation proceedings. Our clinic has provided critical assistance to victims by assisting with T visa applications, U visa applications, and closing deportation proceedings where the United States Citizen and Immigration Services has determined that our client may adjust her status through the T or U visa process.

While our clinic and other legal service providers in Maryland assist victims of crime with immigration proceedings, the need far outpaces our collective capacity. Ensuring a right to counsel in deportation proceedings would ensure that all immigrants are afforded the opportunity to be represented by counsel and receive adequate counseling regarding defenses to deportation and other pathways to remaining in the United States legally.

Providing counsel is not only consistent with due process principles, but also helps protect the community. Many immigrants who are in the United States unlawfully may be afraid to report their victimization to law enforcement for fear of immigration consequences. Providing an attorney to immigrants facing deportation will allow attorneys the opportunity to explain the benefits of cooperating with law enforcement in those types of cases. If immigrants are more likely to cooperate with law enforcement,

presumably more individuals who perpetrate crimes will be brought to justice, making our communities safer for everyone regardless of their immigration status.

Providing counsel to immigrants in deportation proceedings is also consistent with our obligations as parties to the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. Under these treaties, the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group. A separate treaty, known as the Convention Against Torture prohibits the return of people to a country where there are substantial grounds to believe they may be tortured. It can be difficult to determine whether an individual has a valid claim for asylum or protection from torture without legal representation. To meet its protection obligations, the United States should ensure that immigrants are safe, have an understanding of their situation and their rights, and have adequate legal representation when they present their case to a judge.

Sadly, many immigrant victims of crime who face deportation without counsel are children. In 2019, more than 72,000 unaccompanied alien children (UAC) traveled to the U.S. without a parent or legal guardian.¹ Our federal, state and local governments, as well as nonprofit organizations, work to provide legal pro bono services to children who enter the U.S. illegally and are facing removal. Despite these efforts, it is estimated that 75% to 90% of children undergoing deportation proceedings do so without an attorney. This is especially troubling given that unaccompanied minors are especially vulnerable and that many are likely to qualify for relief to remain in the United States. Asylum seekers are at least three times more likely to win relief when represented.² Children with legal representation have obtained legal outcomes that allowed them to remain in the United States 70 percent of the time, compared to just 9 percent for children without representation.³

Our immigration laws are complex and most immigrants are unaware of provisions of the law that would protect them from deportation, making it extremely difficult to get a fair hearing without legal representation. While immigration proceedings are civil, the implications of rulings are among the most serious imaginable as they implicate safety and family unity. Providing due process protection is consistent with our existing legal obligations to these vulnerable individuals and is consistent with protecting victims and public safety at large. For all of these reasons, the Justice for Victims of Crime Clinic urges a favorable report on House Bill 114.

This testimony is submitted on behalf of the Justice for Victims of Crime Clinic at the University of Maryland Carey School of Law and not on behalf of the School of Law; the University of Maryland, Baltimore; or the University of Maryland System.

¹ William A. Kandel “Unaccompanied Alien Children: An Overview,” Congressional Research Service, R43599, Version 26 (2019), <https://fas.org/sgp/crs/homesecc/R43599.pdf>

² Andrew I. Schoenholtz and Hamutal Bernstein “Improving Immigration Adjudications through Competent Counsel,” Georgetown Journal of Legal Ethics 21, no. 1 (2008), 55-60, 55, <https://perma.cc/A834-LCZH>.

³ TRAC, “Juveniles—Immigration Court Deportation Proceedings,” accessed February 24, 2021, <http://trac.syr.edu/phptools/immigration/juvenile/>. Data covers all completed cases from fiscal year 2005 to September 2018.