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HB114

Access to Counsel in Immigration Proceedings Program
House Judiciary Committee

SUPPORT

The Maryland Access to Justice Commission (A2JC) is an independent entity supported by the Maryland State Bar Association (MSBA) that unites leaders to drive reforms and innovations to make the civil justice system accessible, fair and equitable for all Marylanders. Prominent leaders from different segments of the legal community in Maryland – including the deans of the two law schools, the attorney general, law firm partners, heads of the legal services providers and funders, corporate counsel, academics, legislators, the state bar and judiciary comprise the A2JC.

The Maryland Access to Justice Commission Supports the Principle of Access to Counsel

A2JC takes a birds-eye view of the civil justice system and is supportive of the right to counsel and access to counsel in many areas of the civil justice system. Providing access to counsel in civil legal proceedings is a core issue for the Commission and one that the Commission has worked to forge progress on for many years in Maryland. *See [Supporting a Civil Right to Counsel in Maryland \(2009\)](#) and [Implementing a Civil Right to Counsel in Maryland \(2011\)](#).* A2JC was also one of the main supporters of the Access to Counsel in Evictions law (HB 18) that was passed in the 2021 legislative session. The reason for the broad support stems from the reports and the stories that hammer home the same point: Marylanders who cannot afford to hire an attorney in civil legal cases are not equal before the law. The disadvantage of navigating complex laws and processes on one's own in a system designed to and for lawyers results in severe real life consequences in many aspects of the civil justice system, including immigration, housing, consumer law, and abuse - to name a few.

Access to Counsel in Immigration Proceedings Helps Ensure Equality Before the Law

Deportation is classified as a civil rather than a criminal legal matter. For this reason, immigrants facing removal are not afforded the constitutional protections under the Sixth Amendment that are provided to criminal defendants. Whereas in the criminal justice system all defendants who are incarcerated for even one day are provided an

attorney if they cannot afford one, immigrants – who are similarly *detained* and face the life altering consequence of deportation – generally not afforded the same opportunity. Detained immigrants, particularly those held in remote locations, face the additional obstacle of accessing counsel from behind bars. Yet, in every immigration case, the government is represented by a trained attorney who can argue for deportation, regardless of whether the immigrant is represented.

This passage from the landmark case of *Gideon v. Wainwright*, 372 U.S. 335 (1963), explains the essential rationale of providing counsel in criminal proceedings. The similarity and applicability of the rationale to detained immigrants navigating the civil legal system on their own, while facing the spectre of removal from one's country is profound:

[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal . . . spend vast sums of money to . . . try defendants accused of crime . . . Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Counsel in Detention Cases Equals Access to Justice

Years of data and reports show that lack of appointed counsel has a profound impact on immigrants' ability to receive a fair hearing and that counsel can be the key differentiator in the success of a case. A seminal report by the [American Immigration Council](#) that drew data from over 1.2 million deportation cases decided between 2007 and 2012, showed that

- Represented immigrants in detention who had a custody hearing were four times more likely to be released from detention (44% with counsel v. 11% without);
- Represented detained immigrants were nearly 11 times more likely to seek relief from deportation (32% with counsel v. 3% without); and
- Represented immigrants were more likely to obtain immigration relief they sought (49% with counsel v. 23% without).

For the reasons stated, the Maryland Access to Justice Commission requests the House Judiciary Committee to issue a FAVORABLE report on HB114. For more information, please contact Reena K. Shah, Executive Director of the Maryland Access to Justice Commission, at reena@msba.org.