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TESTIMONY IN SUPPORT OF HBI 14
Access to Counsel in Immigration Proceedings Program

TO: Chair Clippinger, Vice Chair Moon, and members of the Judiciary Committee

FROM: Joanna Silver

My name is Joanna Silver and I live in Silver Spring, in District 18. I advocate on behalf of a number of organizations and I coordinated the Montgomery County Deportation Defense Coalition, which came together to advocate for funding for the legal representation of detained immigrants from Montgomery County.

I share this testimony in support of HBI 14 on behalf of Takoma Park Mobilization. Takoma Park Mobilization is a grassroots advocacy organization with a network of over 2500 people in Takoma Park and Silver Spring, Maryland that works to enact local, state, and national policies and laws that ensure equal justice for all, with special attention to the treatment of people of color, immigrants, and other vulnerable individuals in our communities.

While I am testifying in my capacity as a community activist, I work professionally as an Assistant Federal Public Defender in the District of Maryland, where I focus on the intersections between criminal and immigration law and have represented many people charged with illegally reentering the United States after being deported. As a result, I am familiar with the ICE detention and deportation process. This familiarity, along with my personal experience living among the many immigrants at risk of deportation in Montgomery County, leads me to strongly support HBI 14.

The vast majority of immigrants I represent in federal criminal court were not represented by an attorney during their deportation hearings. Through the course of my representation, I review transcripts and recordings of deportation hearings. What I have seen and heard in these proceedings ranges from disturbing to shocking: people with no legal expertise, often no experience with our legal system at all, and almost always participating with the aid of an interpreter, are asked to represent themselves against a lawyer from the Department of Homeland Security in front of a judge working for the Department of Justice. This lack of due process is even more disturbing when one considers, which I must, that removal hearings can

result in both deportation and a federal felony conviction, with penalties ranging from two to twenty years, if the person reenters the country in the future.

The body of law unrepresented immigrants must navigate is complex, so complex that as a criminal law practitioner, I regularly retain the services of immigration attorneys so that I can understand the records I am reviewing and the defenses that could have been raised had my client been represented. With incredibly high caseloads, removal hearings move quickly and are usually perfunctory; while there is a right to due process, that right is meaningless without counsel to enforce it. As a criminal law practitioner who works in a system in which there is a constitutional guarantee to both counsel and due process, the absence of counsel and the mockery of due process that I see in immigration court can be hard to process, yet the consequences are equally, and quite often more severe, than those faced by my clients in their criminal cases.

While most people think of a court proceeding when they think about the deportation process, a significant percentage of my clients were deported through administrative proceedings consisting solely of documents completed and filed by ICE officers, with no right to appear before an immigration judge. In these administrative and expedited proceedings, the ability to identify and understand the small number of defenses available is impossible without a close knowledge of the applicable law or the ability to file the proper motions to stay what is designed to be a rapid deportation process. Moreover, in both administrative proceedings and those before immigration judges, all written applications for relief must be filed in English, which is yet another barrier to justice for pro se, non-English-speaking petitioners.

Of the many thousands of people ensnared in our deportation system, immigrants detained by ICE are the most vulnerable; this is why HBI 14's application to detained immigrants is critical. Detained immigrants are at greater risk of being unrepresented than non-detained immigrants. A person in jail cannot work to pay for an attorney while their case proceeds and the detained immigrant is often the primary breadwinner, leaving their family with even less money than usual to hire an attorney. In addition, there are a limited number of attorneys who represent detained immigrants given the challenge and expense of these cases, including the logistics of representing someone who is often detained far away, with limited if any access to phone calls. Moreover, because detained cases move quickly through the system, the families of detained immigrants have far less time to earn and save the money needed to pay an attorney.

The faster pace of the detained docket also places detained immigrants at greater risk of losing their cases because they have less time to prepare and to gather documents or other evidence needed for their defense. Of course, accessing records and other evidence while detained is next to impossible, even if you know what records and evidence you need. Added to all of this is

that the legal defenses available to detained immigrants are often more complicated, requiring a more sophisticated knowledge of immigration law that many immigration law practitioners themselves lack, hence the small number of attorneys qualified to represent this population.

While immigration detention is classified as “administrative,” detained immigrants face the same threats to their life and liberty as do people in jail for criminal matters. Marylanders detained by ICE are in the same jails as criminal detainees and they face the same denial of appropriate medical care, harsh conditions of confinement, including the use of solitary confinement, and limited access to programming (ICE detainees often have less access to programming than criminal detainees housed in the same facilities). The COVID-19 pandemic has magnified the impact of detention on immigrants facing deportation; they are unable to protect themselves while incarcerated and ICE has done a poor job protecting them, as evidenced by the many outbreaks in ICE detention centers. In addition, public health-related restrictions imposed by immigration courts have limited due process even more than usual. In short, the pandemic has rendered this vulnerable population in even greater need of representation.

In sharp contrast to the regular miscarriages of justice I have observed in the many cases in which my clients lacked counsel during their removal proceedings, I have also had the opportunity to see what can happen when a detained immigrant has high quality representation. I have been fortunate to successfully refer a number of clients to the Capital Area Immigrants’ Rights Coalition (CAIR Coalition) and to a small number of private practitioners over the years, and with the assistance of these attorneys I have had several clients overcome significant obstacles to successfully remain in the United States, supporting their families and contributing to our local economy. Not only has this representation benefited individual immigrants in individual cases, but in many instances I have seen high quality legal representation result in positive changes in case law that has gone on to impact the entire immigration legal system, benefitting many others, including those without lawyers.

Last, but certainly not least, as a resident of Montgomery County, home to the largest number of immigrants of any jurisdiction in the state, I am particularly committed to the establishment of a statewide guarantee to the right to counsel for immigrants detained by ICE. Unlike Prince George’s County and Baltimore City, Montgomery County still does not have a funding mechanism that ensures representation for its detained immigrants. The success and well being of my immigrant neighbors is critical to Montgomery County’s success, which in turn impacts the fiscal and social well being of the entire state. From a moral standpoint, a person’s ability to access due process when detained and facing permanent exile from their community should not depend on what part of Maryland they happen to live in.

For all of these reasons I respectfully ask you to reach a favorable report on HBI 14.