



**TESTIMONY IN SUPPORT OF
SENATE BILL 991, AN ACT CONCERNING ACCESS TO
LEGAL COUNSEL FOR INDIGENT INDIVIDUALS IN
IMMIGRATION REMOVAL PROCEEDINGS**

March 8, 2019

Dear Senator Winfield, Representative Stafstrom, Senator Bergstein, Representative Blumenthal, and Distinguished Members of the Judiciary Committee:

My name is Patricia Marealle, and I am writing on behalf of the Center for Children's Advocacy (CCA) in support of S.B. 991.

CCA is the largest non-profit legal organization in New England devoted exclusively to protecting and advocating on behalf of the legal rights of children. For more than 20 years, CCA has fulfilled its mission to fight for the legal rights of Connecticut's most vulnerable children, including immigrant children. CCA, which is affiliated with the University of Connecticut School of Law, provides holistic representation for poor and low income children in Connecticut's communities through individual representation, education and training, and systemic advocacy. As the attorney of the Center's Immigrant Children's Justice Project, I have represented immigrant children who have fled to the United States to escape persecution, abuse, poverty, and extreme violence, including death threats. Many of these children make the treacherous journey alone, having been separated from or abandoned by their parents. CCA has also trained over one hundred *pro bono* attorneys in Connecticut to represent immigrant children in Special Immigrant Juvenile Status matters. Without exception, the child clients we serve are poor and unable to afford private counsel.

I respectfully ask you to support S.B. 991, An Act Concerning Access to Legal Counsel for Indigent Individuals in Immigration Removal Proceedings.

SB 991 would promote justice for refugee and unaccompanied children, improve the efficiency of removal proceedings, and make Connecticut a national leader in the field of children's rights.

Under federal law, respondents in deportation and removal proceedings before federal Immigration Courts have no right to government-appointed counsel, even if they are children. As a result, many children -- including toddlers -- are forced to "represent themselves" before Immigration Court against charges brought by Department of Homeland Security lawyers. According to the most recent data,

collected in August 2017, only one-fourth of unaccompanied children facing deportation are represented by an attorney.¹

Deportation proceedings are formal and complex proceedings. The Immigration and Nationality Act, like the tax code, is famously confusing and complex, often baffling skilled counsel, Immigration Judges, and federal courts alike. A well-educated native English-speaking adult without legal training would have difficulty representing himself in Immigration Court. A child who may be traumatized and who may not speak or read English -- let alone understand federal immigration law -- has no chance. Immigration Judges are required to inform respondents of defenses for which they might be eligible, and many Immigration Judges take pains to try to explain the law to child migrants. However, simply informing a child that she might have the right to asylum, to relief under the convention against torture, or to Special Immigrant Juvenile Status (SIJS) is meaningless if the child does not have access to counsel. Asylum, relief under the Convention against Torture, and SIJS are difficult defenses to prove and require extensive evidence, which can include expert testimony, medical and human rights documentation, detailed affidavits and -- in the case of SIJS -- advance juvenile court work. In recognition of the difficulty of deportation defense work, the market rate for representation in Immigration Court is in the thousands of dollars. Law school clinical students and pro bono counsel who take on these cases undergo extensive training and devote dozens of hours.

Not surprisingly, children represented by counsel are significantly more likely to win protection from deportation than children who are unrepresented. According to Syracuse University's TRAC database, as of 2014, more than 80 percent of children unrepresented in Immigration Court were deported. In contrast, only 12 percent of children with counsel were deported.² In FY2018, there were 1,040 filings initiated in Connecticut for juvenile deportation proceedings. Similar to the national trend, of the 1,040 filings, 70% of the children still do not have counsel.³ Some of this disparity might be due to selection bias -- nonprofits short on resources will triage the children with the strongest claims -- but even so, it is clear that access to counsel makes a tremendous difference.

Access to counsel is also important because the possibility of legal or factual error in Immigration Court proceedings is high and the consequences are potentially devastating. The tendency of some Immigration Courts, working under severe time pressure and extensive backlogs, to issue rushed, incomplete, erroneous or even nonsensical opinions has been frequently noted by the federal courts. In the cases of refugee and unaccompanied children, the consequences of these errors sometimes involve life and death. There is, unfortunately, growing

¹ Misyrelna Egkolfopoulou, "The Thousands of Children Who Go to Immigration Court Alone," *The Atlantic*, August 21, 2018.

² Misyrelna Egkolfopoulou, "The Thousands of Children Who Go to Immigration Court Alone," *The Atlantic*, August 21, 2018.

³ TRAC Immigration, Juvenile- Immigration Court Proceedings (as of March 5, 2019, FY 2018 numbers are subject to -- 3 -adjustments) available at <https://trac.syr.edu/phptools/Immigration/juvenile/>

documentation of cases of individuals, including minors, who were murdered in Central America soon after their deportations.

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In addition, studies have shown that children who are represented by counsel are more likely to attend their Immigration Court proceedings. Studies also show that proceedings are more efficient when both parties are represented by counsel.⁴

Children's access to legal counsel is an issue that has captured national and international attention. The Ninth Circuit Court of Appeals recently reheard *en banc* a decision denying a 5th Amendment due process challenge on this issue; their decision is still pending.⁵ Proposals have been made at the federal level to amend the Immigration and Nationality Act to provide children a statutory right. Furthermore, the United States has been widely criticized on the international stage as violating basic norms of human rights law by failing to guarantee refugee and unaccompanied children access to counsel. Connecticut has the opportunity to set a precedent for the nation and to be a leader in protecting the basic due process rights of children. We are thrilled that this bill has been raised, and we urge the Members of this Committee to support it.

Respectfully submitted,

Patricia Marealle, Staff Attorney
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Martha Stone, Executive Director
Center for Children's Advocacy

⁴ Ingrid Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164 (1): 1 (December 2015).

⁵ See *C.J.L.G. v. Sessions*, No. 16-73801 (9th Cir. 2018)