



**Catholic Legal Immigration Network, Inc. (CLINIC) testimony before the
Maryland House Judiciary Committee
HB 114, Access to Counsel in Immigration Proceedings Program
Submitted January 31, 2022
Position: Support**

“We ourselves need to see, and then to enable others to see, that migrants and refugees do not only represent a problem to be solved, but are brothers and sisters to be welcomed, respected and loved. They are an occasion that Providence gives us to help build a more just society, a more perfect democracy, a more united country, a more fraternal world and a more open and evangelical Christian community.” *(His Holiness Pope Francis, Messages for the 2014 and 2019 World Days of Migrants and Refugees)*

About CLINIC

As the nation’s largest charitable immigration legal services network, the Catholic Legal Immigration Network, Inc. (“CLINIC”) provides substantive legal and program management training and resources as well as advocacy support at state, local, and national levels. CLINIC serves over 400 affiliated organizations across 49 states and the District of Columbia, providing crucial legal services to hundreds of thousands of low-income and otherwise vulnerable immigrants every year. Embracing the Gospel value of welcoming the stranger, CLINIC cultivates projects that promote the dignity and protect the rights of vulnerable immigrant populations. CLINIC’s national office is in Silver Spring, Maryland. In serving our affiliate network and through our programming, CLINIC has particular expertise in the life-changing -- and at times life-saving -- role that access to representation makes in the life of an immigrant.

Position

CLINIC supports SB 129/HB 114, the Access to Counsel in Immigration Proceedings Program. Adoption of this legislation in Maryland is essential for the fair and efficient operation of immigration deportation proceedings in our state and in other states where Maryland residents appear. This bill helps immigrants, citizens, and our communities as a whole by preserving the stability of families, neighborhoods, and employers. The bill also upholds due process, ensuring that an immigrant is represented in removal proceedings and is allowed to remain in the United States if there is a meritorious defense.

The Consequences of an Immigration System Without Access to Representation

1) Immigrants are not Guaranteed Access to Representation in High-Stake Cases

U.S. immigration law, legal criteria, and proceedings in immigration deportation (removal) cases are complex. Under our current system, which does not guarantee access to representation, we ask and

expect immigrants who are unfamiliar with our laws, our culture, who may be unable to communicate in English, and who may be overcoming trauma to identify their relief and mount a complex legal argument to obtain said relief. Often, immigrants will not even know that they are eligible for relief, or how to apply for it, until they speak to an attorney or accredited representative. In other circumstances, they may know about the relief but are unable to afford a private attorney. Universal representation would give indigent immigrants access to counsel to guide them in what is an incredibly stressful and consequential process.

2) Due Process is at Risk

The recognition of the need for access to legal representation in civil matters has been expanding in the United States for 150 years.¹ Immigration removal proceedings are among the most consequential of civil proceedings, with the life and liberty interests of the potential deportees on the line. One law review article explained the extreme stakes of the situation:

The lack of any right to appointed counsel in removal proceedings might come as a surprise to those uninitiated into the field of immigration law. A noncitizen arrested on the streets of New York City for jumping a subway turnstile of course has a constitutional right to have counsel appointed to her in the criminal proceedings she will face, notwithstanding the fact that it is unlikely she will spend more than a day in jail. If, however, the resulting conviction triggers removal proceedings, where that same noncitizen can face months of detention and permanent exile from her family, her home, and her livelihood, she is all too often forced to navigate the labyrinthine world of immigration law on her own, without the aid of counsel. This is the current state of the law and has been for over a century. (Footnotes omitted.)²

Simply put, under our current system, immigrants can be locked up in detention centers or deported without ever getting the opportunity to speak to counsel to try to gain their freedom or reunite with their families.

3) “Death Penalty Cases Heard in Traffic Court Settings”

Immigration Court Judge and former President of the National Association of Immigration Judges, Dana Leigh Marks, characterized deportation proceedings as “death penalty cases heard in traffic court settings.”³ In the seven years since Judge Marks made this observation, little has changed in access to representation for immigrants in deportation proceedings.

Few detained immigrants have access to an attorney or accredited representative because of detention, cost, availability, or other factors. In the first three months of fiscal year 2022 (October to December 2021), only 20.7 percent of immigrants, including unaccompanied children, had an attorney to assist

¹ Alan Houseman and Linda E. Perle, “Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States,” Center for Law and Social Policy, National Legal Aid & Defender Association, and National Equal Justice Library, rev’d 2018, at https://www.clasp.org/sites/default/files/publications/2018/05/2018_securingequaljustice.pdf.

² Stacy Caplow, Peter L. Markowitz, Jojo Annobil, Peter Z. Cobb, Nancy Morawetz, Oren Root, Claudia Slovinsky, Zhifen Cheng, and Lindsay C. Nash, “Accessing Justice: The Availability and Adequacy of Counsel Removal Proceedings: New York Immigrant Representation Study Report,” 33 *Cardozo L. Rev.* 357 (2011-2012), at <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1551&context=faculty>.

³ Dana Leigh Marks, “Immigration judge: Death penalty cases in a traffic court setting,” op-ed, CNN, June 26, 2014, at <https://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html>.

them in immigration court cases when a removal order was issued.⁴ By providing counsel, this bill ensures greater fairness and efficiency in the courts.

4) Children are Adversely Impacted

It is vital to consider the life-disrupting impact of detention and the risk of deportation on children with parents in detention and/or deportation proceedings. In testimony before the Committee last year, Public Defender Paul DeWolfe said 600 children a year in Maryland were put at risk of having a parent detained or deported.⁵

In the United States there are 4.4 million U.S.-citizen children under the age of 18 who live with at least one undocumented parent as of 2018.⁶ Doctors and service providers who work with children have seen that a “child’s risk of experiencing mental health problems like depression, anxiety, and severe psychological distress increases following the detention and/or deportation of a parent.”⁷ Not to mention that children themselves can be placed into removal proceedings at any time if they do not have lawful status and like their parents, are not guaranteed access to representation.

5) Immigration Courts Present Many Obstacles for Immigrants Already

Immigration courts suffer from various issues such as not being independent and having large backlogs. There are currently 1.6 million people with backlogged cases in U.S. Immigration Courts.⁸ In January 2017, there were 542,411 pending cases.⁹ During the last administration, the backlog increased dramatically because of the lack of immigration judges as well as all the new cases the Department of Homeland Security filed.¹⁰ As the number of cases increase, so does the pressure placed on immigration judges to get through their cases quickly. With COVID, this backlog has only worsened.¹¹

Immigration Courts fall under the Department of Homeland Security of the executive branch of the federal government. The AG can issue mandate such as the one Jeff Sessions issued under the Trump Administration that forced immigration judges to hear 700 cases per year or be fired.¹² As former President of the National Association of Immigration Judges (NAIJ) Ashley Tabaddor said, “Imagine going to a court where you’ve been charged by a prosecutor, and when you come to court you find out that the judge is hired by the prosecutor and can be fired by the prosecutor.”¹³ Quotas and backlogs put pressure on immigration judges to perform quickly and get immigrants in and out of their courts without

⁴ “Immigration Court Quick Facts,” Transactional Records Access Clearinghouse, Syracuse University, at

<https://trac.syr.edu/immigration/quickfacts/?category=epir>.

⁵ Judicial Proceedings Committee, House of Representatives, Maryland, Jan 27, 2021, (testimony of Public Defender Paul DeWolfe), at

<https://www.youtube.com/watch?v=jK7DgMIA-P4&list=PLZByD5Hj5Udlf0fUUQka3S93bCLHkfVh&index=10>.

⁶ “U.S. Citizen Children Impacted by Immigration Enforcement,” Fact Sheet, American Immigration Council, June 24, 2021, at

<https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>.

⁷ *Id.*

⁸ Jasmine Aguilera, “A Record-Breaking 1.6 Million People Are Now Mired in U.S. Immigration Court Backlogs,” TIME, Jan 20, 2022, at

<https://time.com/6140280/immigration-court-backlog/>.

⁹ “The State of the Immigration Courts: Trump Leaves Biden 1.3 Million Case Backlog in Immigration Courts,” Transactional Records Access Clearinghouse, Syracuse University, Jan 19, 2021, at <https://trac.syr.edu/whatsnew/email.210119.html>.

¹⁰ *Id.*

¹¹ “Immigration Court Cases Jump in June 2021; Delays Double This Year,” at Transactional Records Access Clearinghouse, Syracuse University,

<https://trac.syr.edu/immigration/reports/654/>.

¹² Carole Levine, “Immigration Courts: The Case for Independence from the Executive Branch,” Non Profit Quarterly, June 29, 2020, at

<https://nonprofitquarterly.org/immigration-courts-the-case-for-independence-from-the-executive-branch/>.

¹³ *Id.*

allotting sufficient time for them. In these circumstances, to not even give that immigrant counsel to make the most of the limited time they do have, is inhumane.

How Access to Representation in Maryland Will Transform Lives and Communities

Access to counsel will provide legal representation to immigrants facing detention and deportation. This means that immigrants at a most vulnerable time in their lives will have guidance, will better understand their rights and immigration relief, and will have a greater chance to remain with their families and in their homes in Maryland. ***Over the past 20 years, 93 percent of people who won their deportation cases were represented.¹⁴ Eighty percent of those with removal orders were not represented.¹⁵*** This shows the importance of having legal representation. Accordingly, access to counsel upholds the dignity and rights of immigrants providing them counsel, advocacy, and other tools needed to be able to identify their immigration relief and put forward their best case.

CLINIC Urges Lawmakers to Support SB 129/HB 114

CLINIC urges lawmakers to support this bill for the following reasons.

1) To Preserve the Rights and Dignity of Maryland's Residents

We must recognize the diversity of Maryland's population in current lawmaking. In its most recent immigrant profile of Maryland in 2020, New American Economy reported that one in seven Maryland residents was an immigrant, and one in eight residents was a native-born citizen with at least one immigrant parent.¹⁶ Immigrant business owners in Maryland numbered 66,350, or 23 percent of self-employed Marylanders.¹⁷ They generated \$1.7 billion in business income.¹⁸

It is vital to consider the life-disrupting impact of detention and the risk of deportation on immigrant families. Anyone who purports to care about children or families must consider the impact of detention and deportation on child poverty, juvenile delinquency, mental health, and the sacredness of life. They should support access to counsel for these life-affirming reasons and for the costs that Maryland society and taxpayers will carry should this bill not become law.

2) Because it Reflects Catholic Values

CLINIC reflects the church's own tradition of exile, flight, and migration. Catholic social teaching views migration not as a divisive phenomenon, but as an occasion to build the human family. It recognizes a range of human rights for newcomers, based on their God-given dignity that extends far beyond those recognized by individual nations or international bodies. Finally, it teaches that civil authority draws its legitimacy from protecting and defending human rights and the "common good of the entire human family." In this context, service to newcomers constitutes an obligation to persons of faith, not an option.

¹⁴ Kica Matos, "Put Public Defenders in Immigration Courts," Forbes, Jul 1, 2021 at <https://www.forbes.com/sites/forbeseq/2021/07/01/put-public-defenders-in-immigration-courts/?sh=5977eb5911f0>.

¹⁵ *Id.*

¹⁶ New American Economy, "Immigrants in Maryland," 2020, at https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_maryland.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

Catholic social teaching's emphasis on the rights and dignity of all persons explains, in part, why CLINIC and its diocesan partners represent vulnerable newcomers from all countries, religions, social groups, creeds, and ethnic backgrounds. CLINIC and its partners serve non-Catholics precisely because of their Catholic identity.

While it is true that access to counsel comes with a financial cost that cost should not – cannot - compare when weighed against the value of human dignity and life and all the other benefits and gifts that immigrants bring Maryland.

3) Because It Reflects American Values

Access to counsel for immigrants in removal proceedings is not a carve-out of rights for one group but reinforces American values and builds the pathway for rights for indigent litigants in every sort of civil proceeding. Lack of representation can result in the separation of families, the deprivation of liberty, and – in some cases – even result in returning to a country and being killed. Access to counsel is a crucial step for Maryland in upholding due process and access to justice for all residents.

CLINIC appreciates your consideration and urges a favorable report for House Bill 114.