

Declaration of Support by The Bar Association of San Francisco for Pending Federal Legislation to Appoint Counsel in Immigration Proceedings

August 26, 2016 – San Francisco - In alignment with our commitment to the fundamental principles of fairness and due process, The Bar Association of San Francisco hereby declares its support for the provisions in three pending Acts in Congress that would provide appointed legal counsel for unaccompanied immigrant children and vulnerable adults in federal immigration court removal proceedings: the Fair Day in Court for Kids Act of 2016 (S. 2540/H.R. 4646), the Refugee Protection Act of 2016 (S.3241/H.5851), and Secure the Northern Triangle Act (S.3106/H.5850).

This month marks the two-year anniversary of the “surge dockets” at the immigration courts, which were formed specifically to expedite the deportation of an unprecedented wave of unaccompanied minors and families fleeing violence in Central America and Mexico. Since July 2014, over 11,000 children and parents have been put in removal proceedings before the San Francisco Immigration Court, making Northern California a central home for these refugees in the United States.

Currently thousands of children and other vulnerable individuals in federal immigration court face the prospect of removal without counsel. Requiring children or adults to defend themselves in a proceeding that could result in permanent separation from family and livelihood – or return them to persecution or torture in the countries from which they have fled - violates the very foundation of due process and fairness upon which our system of justice is based and deprives them of a meaningful opportunity to apply for protections available under the laws of the United States.

BASF has long advocated that equal access to justice and due process be afforded to everyone, and has played a vital role to ensure that our legal institutions are adequately funded to serve our communities fairly and effectively. The City and County of San Francisco in partnership with BASF’s Justice & Diversity Center became the first city in the nation to offer “Civil Gideon” or attorney representation at no cost to the clients in certain civil proceedings in which basic human needs of shelter and child custody and safety were threatened. [1] BASF also led critical efforts to restore funding to our California courts after drastic cuts to the budget of the judiciary in 2011 and 2012. [2]

Through its Lawyer Referral and Information Service (LRIS), BASF also has a long history of promoting the due process rights of individuals facing deportation in the San Francisco Immigration Court. For over 25 years, BASF has provided experienced immigration counsel to volunteer as “Attorney of the Day” at master calendar hearings, providing orientation and guidance to countless detained and non-detained respondents. In addition, since 2015, BASF has hosted the Legal Director and an Immigration Case Coordinator for the city-funded San Francisco Immigrant Legal Defense Collaborative, a consortium of 13 non-profits organizations that provide legal representation to children and families on the surge dockets. [3] Through these roles, BASF administers the Attorney of the Day program for the surge dockets and oversees over 400

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cases handled by the Collaborative.

According to the United Nations High Commissioner for Refugees (UNHCR), a majority of these unaccompanied children and families are eligible for legal protections that would allow them to lawfully remain in the United States. [4] Yet the ability to access these protections is almost impossible without an attorney to represent them in court. Nine out of ten children without attorneys are ordered deported, while children with attorneys are six times more likely to be granted protection. Women with children are ten times more likely to have a positive outcome in their cases if the family is represented. Yet, only half of all unaccompanied children and 30% of families are able to obtain counsel. [5]

Attorneys are critical to helping people navigate immigration law and procedures, which have been characterized as second only to the tax code in complexity. From our unique role in the SFILDC, we see first-hand how having counsel is essential to these children and families who have suffered incredible trauma. Most in this population speak no English, and all have virtually no understanding of our legal system. Investigating and properly advocating for their legal protections is only possible with the help of knowledgeable immigration attorneys.

Children by definition are not competent to represent themselves in court proceedings and there is no right to appointed counsel to accommodate the current level of need for due process protection in immigration court. This is in stark contrast to other courts in which the welfare of children and vulnerable adults is at stake, such as the juvenile dependency court or probate courts for conservatorships.

The appointment of legal counsel for unaccompanied immigrant children and vulnerable adults in federal immigration court removal proceedings agrees with the mission and values of this association. We therefore applaud the Fair Day in Court for Kids Act, the Refugee Protection Act, and the Secure the Northern Triangle Act to render meaningful the right to due process in our immigration courts, and ensure the fair treatment in our system of justice for the most vulnerable.

Michael Tubach
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The Bar Association of San Francisco