



DEBRA L. RASKIN
PRESIDENT
PHONE: (212) 382-6700
FAX: (212) 768-8116
draskin@vladeck.com

Statement by New York City Bar Association President Debra L. Raskin in Support of the Fair Day In Court for Kids Act of 2016 S.2540/H.R. 4646

The New York City Bar Association (the “City Bar”) supports the Fair Day in Court for Kids Act of 2016 (S. 2540/H.R. 4646), which would provide appointed legal counsel for unaccompanied immigrant children and vulnerable adults in federal immigration court removal proceedings. The City Bar has long supported access to legal representation in such proceedings. Requiring children or adults to defend themselves without counsel in adversarial proceedings that can lead to permanent separation from family and livelihood – and often to persecution, abuse, or torture – is fundamentally unfair and violates basic American values.

This legislation meets a critical need. Recently, a supervisory federal immigration judge testified at a deposition that he could train 3- and 4-year-old unaccompanied immigrant children to serve as their own legal counsel in removal proceedings. An assertion so contrary to basic precepts of child development underscores the absurdity of requiring children to represent themselves in complex legal proceedings.

Currently tens of thousands of children and other vulnerable individuals in federal immigration court are facing the prospect of removal without counsel. The City Bar expresses deep concern about this violation of fundamental fairness, and notes a recent study¹ showing that children without legal counsel are far more likely to be ordered removed than those who have counsel. Without counsel, children cannot meaningfully evaluate, support, or present their claims for protection in the United States.

When skilled attorneys represent children and adults in immigration court, court proceedings also run more smoothly² and achieve more accurate results. Many of our members work or volunteer with innovative legal service organizations, *pro bono* programs, or law school clinics that are striving with very limited funding to meet the overwhelming need for legal services in immigration court. Their work is critical to help their clients accurately and fully share their

¹ TRAC Immigration, New Data on Unaccompanied Children in Immigration Court (July 15, 2014), <http://trac.syr.edu/immigration/reports/359/>.

² A 2014 NERA report found that an appointed counsel program could be implemented at little or no cost to taxpayers, primarily because such a program would increase efficiency and decrease the amount of time individuals must be detained before their cases are completed. See John D. Montgomery, *Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings* 3 (2014), available at www.nera.com/nera-files/NERA_Immigration_Report_5.28.2014.pdf.

stories of persecution, torture, abuse, or neglect with adjudicators and to support their claims with legal argument and evidence. Our members' work also shows that appointing skilled counsel for children and vulnerable adults alike significantly improves the practice of law in immigration court. With counsel present, immigration court judges can focus on the legal claims and facts presented, rather than attempting to teach immigration law to young children.

In addition to the bill's core provisions regarding access to counsel, the proposed legislation would respect basic American values in removal proceedings in other significant ways. For example, the bill would require that the Department of Homeland Security provide immigrants facing potential removal from the United States with a copy of the government records that the government wishes to use against them in removal proceedings. Under current law, DHS does not provide these records. Although individuals may file requests under the Freedom of Information Act (FOIA), the immigration courts do not provide notice of the ability to file such requests, and FOIA responses are so delayed that people in immigration court often cannot obtain copies of their records before their removal proceedings conclude.

The bill would also increase immigrants' critical access to legal information through expanded legal orientation programs, among other important provisions.

In conclusion, the City Bar strongly supports the Fair Day in Court for Kids Act of 2016. The Act would provide necessary safeguards to those facing removal from the United States including appointing counsel to the most vulnerable members of our community, young children. Appointing counsel for those who cannot afford to hire an attorney is the right thing to do, and necessary to ensure fundamentally fair proceedings.

April 2016