February 27, 2019

Fairfax County Board of Supervisors
Fairfax County Government Center
12000 Government Center Pkwy
Fairfax VA, 22035

Dear Members of the Board of Supervisors:

I write on behalf of the American Bar Association (ABA) and its 400,000 members to express strong support for a proposal that you will soon be asked to vote on to provide funding to help expand legal representation for immigrants in removal proceedings.

As you know, in late April the Board of Supervisors (Board) will conduct its FY 2019 3rd quarter review of its budget while concurrently approving its FY 2020 budget. During this process, the Board will vote on a proposal, introduced by Supervisors McKay and Foust on January 22, 2019, to approve $200,000 for a pilot program to provide universal representation for immigrant residents in removal proceedings in Fairfax County. As noted in the request, this program would provide legal representation for detained residents or residents at risk for detention, as well as provide legal rights education to all county residents.

The ABA, through its Commission on Immigration and other related entities has long emphasized the importance of representation in removal proceedings, where a lawyer’s assistance is essential for a noncitizen to fully understand and effectively navigate the complexities of the U.S. immigration system. In 2017, the ABA adopted a policy supporting appointed counsel at federal government expense for indigent persons in removal proceedings. Until such federal funding is provided, the policy encourages state, local, territorial, and tribal governments to provide legal counsel to all indigent persons in their jurisdictions who are in removal proceedings and who lack the financial means to hire private counsel and who lack pro bono counsel. We also urge prioritization of such funding for detained individuals, recognizing the significant barriers detention creates for those seeking counsel.

As you are aware, under our nation’s immigration laws, immigrants—including both those with lawful permanent resident status and undocumented immigrants—are not entitled to legal representation at the cost of the government during their deportation
proceedings.1 This lack of legal representation is particularly problematic considering that deportation proceedings, which are civil in nature, often resemble criminal justice proceedings, including long periods of incarceration and severe consequences, such as permanent expulsion from the United States. Numerous academic and policy studies have consistently shown that legal counsel makes a significant difference in immigration court proceedings, with represented noncitizens being more likely to identify, apply for, and secure immigration relief.2 In the Arlington Immigration Court—where most Fairfax County residents appear for their case—representation doubled the likelihood that a noncitizen would successfully win their case.3 And yet, despite the critical importance of representation, many noncitizens are unable to secure counsel due to financial barriers and the institutional obstacles of immigration detention. In the Arlington Immigration Court, for example, 71% of all noncitizens had no legal representation.4

In our view, the fair and efficient operation of the immigration court system is fundamentally linked to the issue of access to counsel and legal information. We believe that providing funding for legal representation for residents detained for deportation proceedings in Fairfax County will benefit the detained persons and their families, as well as the community, and urge you to support this proposal.

Thank you for your consideration of this request. If you have any questions or would like additional information, please feel free to contact Kristi Gaines, in the ABA Governmental Affairs Office, at kristi.gaines@americanbar.org or 202-662-1763.

Sincerely,

Holly O'Grady Cook

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1 8 U.S.C. § 1362 (West 2018) (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel . . .”).


4 Id.