

May 16, 2013

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Oppose Sen. Grassley's Amendment 40 to S.744 Restricting Access to Counsel

Dear Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

We write to you as a broad coalition of organizations to strongly oppose any amendments to Section 3502 of the Senate Gang of 8 bill (S. 744, Border Security, Economic Opportunity, and Immigration Modernization Act of 2013) that would weaken or limit appointed counsel for people with serious mental disabilities, unaccompanied minors, and other vulnerable populations. The immigration system is complex and difficult to navigate even for attorneys and other immigration professionals, but it presents even more daunting obstacles for vulnerable people, including those with mental disabilities and unaccompanied children. These individuals may not even understand the charges against them or be able to provide the court with basic information relevant to their case, yet they face deportation and may be detained without the assistance of a lawyer – at significant cost to the U.S. taxpayers.

We believe that Sec. 3502 not only guarantees fundamental fairness in immigration proceedings, but would also ensure that our new immigration system is more just and efficient – at a net savings for taxpayers. Thus, we strongly urge that you oppose Senator Grassley's Amendment 40, which would completely nullify Sec. 3502's provisions by making the appointment of counsel optional even in cases where the proceedings would otherwise be fundamentally unfair – exactly our current, broken system.

- Appointed counsel isn't just an issue of basic fairness; it will also save the taxpayers money. The annual cost per detainee is about \$166/day, or about \$60,000/year. The government wastes money each extra day that a vulnerable detainee spends in jail while judges, social workers, and others look (often in vain) for a lawyer to represent them for free. That detention cost exceeds the cost of legal representation.
- The New York Times recently reported that Department of Justice officials agree that the measures would save money overall by reducing expensive prolonged detention for immigrants with disabilities. The National Association of Immigration Judges urges that "a higher percentage of attorney representation . . . would increase court efficiency and ultimately result in cost savings."
- Absent appointed counsel for these vulnerable individuals, there may be serious ramifications – including the deportation of a U.S. citizen, as in the case of Mark Lyttle,

recently featured in the attached New Yorker article, or a person's return to a country of origin where their well-being or physical safety may be imminently threatened.

- Consider the following examples:
 - *Jose Antonio Franco-Gonzalez*: An immigrant from Mexico, Franco was not able to speak until he was six or seven, does not know his birthday or age, has trouble recognizing numbers and counting, and cannot tell time. In 2005, while Franco was in immigration custody, a government psychiatrist found him clinically incompetent, and an immigration judge closed his case because Franco could not understand the proceedings. Unrepresented by counsel, he was remanded back into immigration custody, where he was forgotten. He spent another four years behind bars—at a cost of almost \$300,000 – before he was found by pro bono attorneys who filed a lawsuit to secure his release. No one should have to suffer the tragedy that Franco did, losing half a decade of his life in immigration prison. If the government pocketed the amount that it spent keeping Franco in detention, it could have paid a lawyer for about six years (estimating an annual salary of \$50,000/year), and a full-time lawyer could represent dozens of immigrants over that course of time.
 - *Mary*, 15, and *Sara*, 6, are Bambaran girls from Mali. Both are victims of female genital mutilation, at ages 11 and 3, respectively; they continue to endure painful and dangerous side effects. The older girl has been diagnosed with depression, anxiety, and post-traumatic stress disorder. Both Mary and Sara are also victims of domestic violence, and Mary of rape. Mary was facing forced marriage when she and her sister fled to the United States to live with a distant relative. Because of their youth, significant mental and physical trauma, and inability to speak English, there was no way that the girls could make their case for U.S. protection. A pro bono attorney helped them through a much delayed and difficult process, including a harsh interrogation by an asylum officer. The girls finally received asylum after more than 2.5 years in the system, yet absent free legal assistance would have had to navigate their legal proceedings alone.
 - *Maksim Zhalezny* is a lawful permanent resident who has significant psychiatric disabilities and is not able to represent himself. DHS wants to deport him for two non-violent offenses, but his case has been repeatedly delayed because the judge was not willing to proceed against him without a lawyer. He spent 442 days in immigration detention - at a cost of over \$70,000 - until a federal court ordered the government to provide him an attorney who could argue for his release.
 - A 16 year-old girl was referred to Ayuda through Child Protective Services as a potential human trafficking victim. Once she was screened, it was discovered by the immigration attorney that she came to the United States with her baby, who was now two years old. The immigration attorney discovered the 2 year old baby had also been put into removal proceedings when they were apprehended by Customs and Border Protection. No one had referred the baby to an immigration

attorney, and the young mother was not fully aware her baby had been placed in removal and risked deportation if she did not help him attend his court hearing. Even after the children obtained counsel, they had a hard time complying with the immigration court's requirements, since they were dependent on others to help transport them to court and facilitate their applications for relief. If either child had not been represented, they would have been ordered removed.

For these reasons, we urge you to oppose Senator Grassley's Amendment 40 and any amendment that would weaken access to counsel in S.744. If you would like any additional information about Sec. 3502, please feel free to contact us. We thank you in advance for your support for Sec. 3502, and applaud the Senate Judiciary Committee and the sponsors of S. 744 for working to create a more just, efficient, and humane immigration system.

Sincerely,

American Association of People with Disabilities
American Civil Liberties Union
American Immigration Lawyers Association
Asian American Justice Center, member of Asian American Center for Advancing Justice
Asian Law Caucus
Autistic Self Advocacy Network
Capital Area Immigrants' Rights Coalition
Center for Gender & Refugee Studies
Coalition for Humane Immigrant Rights of Los Angeles
Detention Watch Network
Disability Rights Education & Defense Fund
Esperanza Immigrant Rights Project, Catholic Charities of Los Angeles, Inc.
Families for Freedom
First Focus Campaign for Children
Human Rights First
Immigration Equality
Judge David L. Bazelon Center for Mental Health Law
Kids in Need of Defense (KIND)
Legal Services for Children
Lutheran Immigration and Refugee Service
NACBHDD
National Disability Rights Network
National Immigrant Justice Center
New York Legal Assistance Group
Physicians for Human Rights
Political Asylum Immigration Representation Project
Reformed Church of Highland Park, NJ
Research Institute Without Walls
Safe Passage Project New York Law School
The Door's Legal Services Center
Unitarian Universalist Service Committee

Weill Cornell Center for Human Rights

Women's Refugee Commission

Young Center for Immigrant Children's Rights at the University of Chicago