

Introduced by Senator Lara

(Coauthors: Senators De León, Hall, Hernandez, Mendoza, and Mitchell)

(Coauthors: Assembly Members Alejo, Arambula, Calderon, Campos, Eggman, Cristina Garcia, Eduardo Garcia, Gomez, Gonzalez, Roger Hernández, Lopez, Medina, Rendon, Rodriguez, Salas, Santiago, and Thurmond)

August 23, 2016

Senate Joint Resolution No. 28—Relative to immigrant children.

LEGISLATIVE COUNSEL’S DIGEST

SJR 28, as introduced, Lara. Immigrant children: legal representation.

This measure would urge the federal government to ensure that immigrant children are afforded due process under the law in removal proceedings by providing government-funded attorneys, trained in immigration law, to all indigent children seeking an immigration remedy. The measure would urge the federal government to first hear cases involving children that have legal counsel and to immediately halt cases brought against unrepresented immigrant children until lawyers are made available to represent them.

Fiscal committee: no.

- 1 WHEREAS, The Fifth Amendment to the United States
- 2 Constitution provides that a person shall not be deprived of life,
- 3 liberty, or property without due process of law, thereby ensuring
- 4 that he or she will receive a fundamentally fair, orderly, and just
- 5 judicial proceeding before being deprived of his or her freedom;
- 6 and

1 WHEREAS, Former Assistant Chief Immigration Judge Jack
2 H. Weil, a senior official in the United States Department of
3 Justice, asserted in a deposition that he has trained toddlers in
4 immigration law and can afford them a fair hearing without the
5 toddler being represented by legal counsel; and

6 WHEREAS, The assertion made by Judge Weil is contemptible
7 and offensive to our country's Fifth Amendment constitutional
8 mandate to provide all with due process under the law; and

9 WHEREAS, Due process cannot be guaranteed in an adversarial
10 immigration removal proceeding without legal representation; and

11 WHEREAS, Article 14 of the Universal Declaration of Human
12 Rights, adopted in 1948, states that "Everyone has the right to seek
13 and to enjoy in other countries asylum from persecution."
14 Accordingly, children escaping from violence in other countries,
15 whether unaccompanied or accompanied by a parent, are not
16 "illegal" when they come to the United States in search of asylum;
17 and

18 WHEREAS, The protections of Article 14 have been
19 incorporated by the United States Congress into domestic law,
20 which now protects all asylum seekers, including children, by
21 prohibiting the federal government from returning to their home
22 countries persons who have fled persecution due to race, religion,
23 nationality, political opinion, or membership in a particular social
24 group; and

25 WHEREAS, It is our nation's legal and moral obligation to open
26 our arms to children who fear harm in their country of origin and
27 to foreign-born children in the United States who cannot be
28 reunified with one or both parents due to abuse, neglect, or
29 abandonment and who are therefore eligible for Special Immigrant
30 Juvenile Status or any other immigration remedy; and

31 WHEREAS, Respect for due process requires that all indigent
32 children seeking asylum, Special Immigrant Juvenile Status, or
33 other immigration remedies in defense of deportation be afforded
34 government-funded competent immigration counsel; and

35 WHEREAS, According to a study by the Transactional Records
36 Access Clearinghouse, the foremost authority on federal
37 immigration enforcement data, unrepresented children were ordered
38 to leave the United States in 86 percent of cases, whereas
39 represented children were ordered to leave the United States in
40 only 16 percent of cases; and

1 WHEREAS, As demonstrated by the same study, the provision
2 of legal representation would improve the integrity of the
3 immigration court system, because children without legal
4 representation fail to appear in court and therefore are ordered
5 removed in absentia in 75 percent of cases. By comparison,
6 children with legal representation do consistently appear in court
7 and are therefore ordered removed in absentia in only 3 percent
8 of cases; and

9 WHEREAS, The federal government is denying indigent
10 immigrant children in California their rights to a fair trial under
11 the Fifth Amendment to the United States Constitution because
12 the federal government does not provide these children with legal
13 representation in immigration court. These children therefore face
14 the threat of deportation to violent and dangerous conditions where
15 they may face persecution, violence, or even death; and

16 WHEREAS, Human Rights Watch filed an amicus brief in the
17 case of J.E.F.M. v. Lynch, a nationwide lawsuit on behalf of
18 thousands of children who are challenging the federal government's
19 failure to provide the children with legal representation in
20 deportation hearings, arguing that the failure of the United States
21 government to appoint lawyers to represent immigrant children
22 facing deportation violates their basic rights under international
23 law; and

24 WHEREAS, the California Attorney General has engaged in
25 efforts to close the legal services gap for unaccompanied immigrant
26 children across California and joined an amicus brief in J.E.F.M.
27 v. Lynch.

28 WHEREAS, Since January 2014, at least 83 deportees, including
29 children, from the United States, were reported murdered upon
30 their return to Guatemala, Honduras, and El Salvador, which
31 remain three of the most violent countries in the world; and

32 WHEREAS, There are currently over 13,800 children in
33 California that are not represented by legal counsel in immigration
34 court; and

35 WHEREAS, California has a duty to protect the welfare of
36 children within our state, including immigrant children; and

37 WHEREAS, California values immigrant children and has made
38 this clear through legislative enactments, including Assembly Bill
39 540 (2001), Assembly Bills 130 and 131 (2011), commonly
40 referred to as the California Dream Act, Senate Bill 1064 (2012),

1 Senate Bill 873 (2014), commonly referred to as the
2 Unaccompanied Minors Program, Senate Bill 1210 (2014),
3 commonly referred to as the California DREAM Loan Program,
4 and Senate Bills 4 and 75 (2015), commonly referred to as the
5 Health4All Kids Act; and

6 WHEREAS, Special Immigrant Juvenile Status under Section
7 1101(a)(27)(J) of Title 8 of the United States Code is immigration
8 relief that relies on a state's interest in the welfare of children and
9 provides for Special Immigrant Juvenile Status where a state court
10 determines that reunification with one or both of the immigrant's
11 parents is not viable due to abuse, neglect, abandonment, or similar
12 basis found under state law and that it would not be in the child's
13 best interest to return to his or her home country; and

14 WHEREAS, California makes an annual \$3 million investment
15 to ensure that unaccompanied minors receive the legal
16 representation that they need to pursue Special Immigrant Juvenile
17 Status and other immigration relief; and

18 WHEREAS, California passed Senate Bill 873 (2014) and
19 Assembly Bill 900 (2015) to ensure that California courts issue
20 the predicate orders necessary for children to apply for Special
21 Immigrant Juvenile Status; and

22 WHEREAS, California is disadvantaged when California's
23 children are denied their rights under the United States
24 Constitution, including their right to due process; and

25 WHEREAS, California has a strong interest in ensuring that the
26 children living in this state are not unfairly deported. Schools are
27 disrupted when children are pulled from classes, communities are
28 thrown into disorder when families are torn apart, the health and
29 welfare of these children are put at risk, and the state is denied the
30 potential societal and economic contributions of these children;
31 now, therefore, be it

32 *Resolved by the Senate and the Assembly of the State of*
33 *California, jointly,* That the Legislature of the State of California
34 urges the federal government to take action to remedy this injury
35 to the State of California, through appropriate measures within the
36 United States Department of Justice, the United States Department
37 of Homeland Security, and the Office of Refugee Resettlement,
38 and ensure that immigrant children are afforded due process under
39 the law when they are fighting to remain in the United States of
40 America, by providing government-funded attorneys, trained in

1 immigration law, to all indigent children fighting deportation and
2 seeking an immigration remedy; and be it further

3 *Resolved*, That the Legislature of the State of California urges
4 the federal government to rearrange its dockets to first hear the
5 cases of children who have legal representation and to immediately
6 halt cases it is pursuing against unrepresented immigrant children
7 until lawyers are made available to represent them; and be it further

8 *Resolved*, That the Secretary of the Senate transmit copies of
9 this resolution to the President and Vice President of the United
10 States, to the Speaker of the House of Representatives, to the
11 Majority Leader of the Senate, to each Senator and Representative
12 from California in the Congress of the United States, and to the
13 author for appropriate distribution.