

## Senate Joint Resolution No. 28

### RESOLUTION CHAPTER 190

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

[Filed with Secretary of State September 9, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

SJR 28, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, California values immigrant children and has made this clear through legislative enactments, including Assembly Bill 540 (2001), Assembly Bills 130 and 131 (2011), commonly referred to as the California Dream Act, Senate Bill 1064 (2012), Senate Bill 873 (2014), commonly referred to as the Unaccompanied Minors Program, Senate Bill 1210 (2014), commonly referred to as the California DREAM Loan Program, and Senate Bills 4 and 75 (2015), commonly referred to as the Health4All Kids Act; and

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

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

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

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

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

*Resolved by the Senate and the Assembly of the State of California, jointly,* That the Legislature of the State of California urges the federal government to take action to remedy this injury to the State of California, through appropriate measures within the United States Department of Justice, the United States Department of Homeland Security, and the Office of Refugee Resettlement, and ensure that immigrant children are afforded due process under the law when they are fighting to remain in the United States of America, by providing government-funded attorneys, trained in immigration law, to all indigent children fighting deportation and seeking an immigration remedy; and be it further

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

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

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