
Introduced by Senator Lara

August 30, 2016

Senate Resolution No. 89—Relative to immigrant children.

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
7 WHEREAS, Former Assistant Chief Immigration Judge Jack
8 H. Weil, a senior official in the United States Department of
9 Justice, asserted in a deposition that he has trained toddlers in
10 immigration law and can afford them a fair hearing without the
11 toddler being represented by legal counsel; and
12 WHEREAS, The assertion made by Judge Weil is contemptible
13 and offensive to our country’s Fifth Amendment constitutional
14 mandate to provide all with due process under the law; and
15 WHEREAS, Due process cannot be guaranteed in an adversarial
16 immigration removal proceeding without legal representation; and
17 WHEREAS, Article 14 of the Universal Declaration of Human
18 Rights, adopted in 1948, states that “Everyone has the right to seek
19 and to enjoy in other countries asylum from persecution.”
20 Accordingly, children escaping from violence in other countries,
21 whether unaccompanied or accompanied by a parent, are not
22 “illegal” when they come to the United States in search of asylum;
23 and
24 WHEREAS, The protections of Article 14 have been
25 incorporated by the United States Congress into domestic law,
26 which now protects all asylum seekers, including children, by

1 prohibiting the federal government from returning to their home
2 countries persons who have fled persecution due to race, religion,
3 nationality, political opinion, or membership in a particular social
4 group; and

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

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

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

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

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

36 WHEREAS, Human Rights Watch filed an amicus brief in the
37 case of J.E.F.M. v. Lynch, a nationwide lawsuit on behalf of
38 thousands of children who are challenging the federal government's
39 failure to provide the children with legal representation in
40 deportation hearings, arguing that the failure of the United States

1 government to appoint lawyers to represent immigrant children
2 facing deportation violates their basic rights under international
3 law; and

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

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

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

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

17 WHEREAS, California values immigrant children and has made
18 this clear through legislative enactments, including Assembly Bill
19 540 (2001), Assembly Bills 130 and 131 (2011), commonly
20 referred to as the California Dream Act, Senate Bill 1064 (2012),
21 Senate Bill 873 (2014), commonly referred to as the
22 Unaccompanied Minors Program, Senate Bill 1210 (2014),
23 commonly referred to as the California DREAM Loan Program,
24 and Senate Bills 4 and 75 (2015), commonly referred to as the
25 Health4All Kids Act; and

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

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

38 WHEREAS, California passed Senate Bill 873 (2014) and
39 Assembly Bill 900 (2015) to ensure that California courts issue

1 the predicate orders necessary for children to apply for Special
2 Immigrant Juvenile Status; and

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

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

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

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

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