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April 24, 2018

Senator William N. Brownsberger
Joint Committee on the Judiciary
State House, Room 504
Boston, MA 02133

Representative Claire D. Cronin
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Re: S.825 (Creem) and H.869 (Kafka), An Act relative to special juveniles

Dear Chairpersons Brownsberger and Cronin:

I write as president of the Boston Bar Association (BBA), a volunteer organization of more than 13,000 attorneys drawn from private practice, corporations, government agencies, legal-aid organizations, the courts, and law schools. Our mission is to advance the highest standards of excellence for the legal profession, facilitate access to justice, serve the community at large and promote diversity and inclusion.

The BBA is proud to support the identical bills S. 825 (Creem) and H. 869 (Kafka), An Act relative to special juveniles, which would provide critical access to justice for a small set of vulnerable young people, between the ages of 18 and 21. As you know, this legislation would simply allow those individuals to make the case to federal authorities that they qualify for special status under existing federal law, because they have been abused, neglected, or abandoned, and would be at risk if returned to their home countries.

The BBA has long been concerned about this issue. In 2015, we filed an amicus brief in *Recinos v. Escobar*, arguing that the Probate & Family Court has jurisdiction, in equity, over those seeking status as special immigrant juveniles (SIJ's) and may make predicate special findings to support SIJ applications for those up to age 21. Although the Court accepted that argument, the ruling did not obviate the need for a statutory remedy as a permanent and comprehensive solution to this limited but urgent problem.

In fact, the U.S. Citizenship and Immigration Services (USCIS) has recently begun acting in defiance of the spirit, if not the letter, of *Recinos*, finding that SIJ applicants who are over the age of 18 have not met their burden of proof,

and claiming that the Legislature “has established that a child is someone under the age of 18” and that therefore our Juvenile Court lacks jurisdiction to make the necessary dependency findings for anyone between 18 and 21.

As amended, S. 825 and H. 869 will explicitly grant the Court that statutory jurisdiction, applicable retroactive to the date of the Recinos decision and to any petitions that were wrongfully denied or revoked in this manner, based on the child’s age.

As lawyers, we recognize that while the courts enjoy significant power to right wrongs through their equitable jurisdiction, only the Legislature can act to provide clear statutory parameters and guidelines for the courts’ authority. Here, given the position of the USCIS, it is even clearer that legislation is the only mechanism by which a pathway to stable legal status can be offered to all at-risk juveniles who meet the federal law’s requirements, without having to rely on the discretion and the legal interpretations of individual judges on a case-by-case basis. Furthermore, these bills spell out a well-defined framework for the courts in handling such cases – helping judges and their staffs, as well as applicants and their legal counsel (if any) to understand how to file and pursue a claim.

This legislation has the support of the courts, bar associations, and legal-service providers who represent the individuals whose ability to stay in Massachusetts – and with it their safety and security – are at stake. On behalf of the BBA, I urge you to give these bills a favorable report, and thus help extend access to justice to a small group of neglected, abused, and abandoned young people who have nowhere else to turn.

Sincerely,



Mark Smith
President

cc: Senate President Harriette Chandler
Speaker of the House Robert DeLeo
Senator Karen Spilka
Senator Cynthia Stone Creem
Representative Jeffrey Sánchez
Representative Louis Kafka
Judiciary Committee members