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August 1, 2019

Governor Andrew Cuomo
Governor's Office
State Capitol
Albany, New York 12224

Re: Bill Number S5024A; the "Reuniting Families" Act

Dear Governor Cuomo:

We, the undersigned, are a group of adoption attorneys and other adoption and child-welfare professionals from across New York State, who work with adoptive families, children, child welfare agencies and the court system to protect and advocate for the rights of adoptive children and their families. We submit this letter in support of Bill Number S5024A (the "Reuniting Families" Act), which proposes to make various amendments to the New York State Social Services Law, relating to parental rights of parents who are detained in immigration detention or immigration removal

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proceedings. The bill has already passed through both the Senate and Assembly, and we urge you to sign the bill into law for the reasons more fully set forth herein.

The New York State Social Services Law (“SSL”) outlines the procedure for a county social services department to terminate the parental rights of a birth parent to a child in foster care. Specifically, SSL § 384-b(3)(1)(i) provides that, where a child has been in foster care for 15 months out of the most recent 22 months, the social services department is compelled to file a petition to terminate the parental rights of the child’s birth or legal parent(s) unless certain circumstances exist.

As is relevant to the pending legislation, if the birth parent(s) is/are incarcerated or participating in a residential substance abuse program, and this is a significant factor as to why their child has remained in foster care, the Department of Social Services is not required to file a petition to terminate their parental rights so long as the birth parent maintains a “meaningful role” in the child’s life.

The proposed bill would add that, if a birth parent is detained in an immigration detention center or in immigration removal proceedings, and that is a significant factor as to why the child is in foster care, it likewise will not serve as a basis for the county to seek to terminate their parental rights.

These exceptions are included in the SSL to recognize that there may be circumstances outside of the birth parent(s)’ control that may prevent them from reunifying with their child (such as incarceration or participation in a residential substance abuse program).


Likewise, a birth parent’s involuntary detention or involvement in an immigration proceeding may render that parent unable to resume custody of his or her child, despite their desire and efforts to do so. When a child enters the foster care system (either before or because of immigration enforcement efforts), it may be very difficult for the parent(s) to fulfil the court’s and DSS’s reunification requirements, as they may have difficulty exercising visitation, maintaining regular contact with the child, attending court appearances, and/or communicating with county caseworkers. Language barriers, a lack of familiarity with the legal system, and cultural differences may compound these difficulties. Given that immigration proceedings often take several years to resolve, many birth parents across the State have had their parental rights permanently terminated, due solely to circumstances beyond their control.

A parent’s involvement in immigration proceedings, on its own, has no bearing on his or her ability or fitness as a parent, and that parent may be otherwise fully able to care for his or her child at the conclusion of the immigration proceeding. As was stated by the legislature in its official justification for

the bill, “[t]o terminate parental rights, in the midst of such proceeding, would prematurely and permanently separate the parent and child, resulting in trauma and hardship to the family.”

It goes without saying that, in today’s political climate, families are encountering federal immigration enforcement efforts with increasing frequency and at increasing rates. Studies suggest that at least 5,100 children who are presently in foster care are there as a result of the detention or deportation of their parents.¹ The purpose and effect of this bill will be to keep children with their families when it is in their best interests to do so, and to ensure that families that have been separated by ICE or other immigration officials are treated fairly and receive appropriate services and due process.

In June of 2018, the Academy of Adoption & Assisted Reproduction Attorneys, a national organization of attorneys whose practice focuses on adoption and assisted reproduction technology (an organization to which all members of NYA AFF belong), issued a Resolution officially resolving that it “opposes the forced separation of migrant children from their parents, unless absolutely necessary to protect these children from harm that may be suffered at the hands of their parents.”² We join the Academy in urging you to sign this bill into law for the reasons more fully set forth herein.



New York Attorneys for Adoption and Family Formation
By: Kathleen (“Casey”) Copps DiPaola, Esq.
President

¹ www.s4185.com (“A Bill to Reunite Families in New York State”)

² <https://adoptionart.org/2018/06/12/aaaa-adopts-resolution-regarding-migrant-children/> (“AAAA Adopts Resolution Regarding Migrant Children”)