

## Nate Biscotti

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**From:** Jill Martin Diaz (they/elle) <jill@vaapvt.org>  
**Sent:** Thursday, May 8, 2025 4:21 PM  
**To:** Nate Biscotti  
**Cc:** Martin LaLonde  
**Subject:** Re: [External] Re: Testimony today

Nate:

Thank you again for coordinating the hearings on S.95/H.98. Please find here a copy of my prepared testimony for the Committee for easy reference:

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Good morning, Chair LaLonde and members of the Committee. My name is Jill Martin Diaz, and I'm the Executive Director of the Vermont Asylum Assistance Project (VAAP). We're a nonprofit that provides legal services to immigrant families navigating humanitarian immigration relief.

**At VAAP, we work with immigrant families facing the most fragile moments of their lives** — including sudden separation due to immigration detention or deportation. I'm here to strongly support S.95/H.98 because it's a tool that preserves family unity, honors immigrant parents' rights, and protects children from unnecessary trauma during the worst moment of a family's life — an immigration arrest or deportation. These bills provide a critical legal mechanism to protect children from entering state custody and to preserve family unity when a parent is detained or deported. **This bill is consistent with both Vermont values and federal immigration law**, which already looks to state courts — including Vermont's Probate and Family Divisions — to make protective determinations in family matters involving immigrant youth. Below I outline the reasons why VAAP supports the "standby guardianships" provisions of S.95/H.98 and address some frequently arising questions about these bills.

### 1. Protecting Children Without Punishing Parents

**Standby guardianships are a preventative, humanitarian response.** This bill allows immigrant parents to identify trusted adults who can step in as temporary guardians only if and when the parent is detained or deported. This avoids sudden custody transfers to DCF, traumatic separations, or confusion in emergency situations. It affirms the dignity of immigrant parents and honors their intent for their children's care.

**This need and program efficacy are not speculative.** Since 2017, Vermont Legal Aid and community partners like VAAP have helped dozens of families create these plans. But legal tools like standby guardianship need to be predictable and accessible to work effectively. This bill gives Vermont Legal Aid clinics clarity and confidence as partners prepare more than 100 families for standby guardianships this year.

In the current political climate, **Vermont Legal Aid, in collaboration with VAAP and partners across the state, is fielding a surge of requests** for standby minor guardianship support. The infrastructure exists. What we need is clarity and consistency in the law. Standby guardianship ensures that children of detained or deported parents can stay with trusted adults, not end up in state custody. It's a harm-reduction tool. Without it, kids risk being funneled into DCF custody — a system not designed to reunify them with deported parents or to protect immigrant parental rights.

### 2. Family Preparedness Is Not Fear-Mongering — It's Smart Policy

Despite political rhetoric, mass deportations remain unlikely due to logistical, legal, and constitutional constraints. However, **enforcement actions still happen**, and even one separation can cause irreparable harm. Families deserve the chance to prepare without stigma — to name a guardian, to make a plan, and to keep their children safe and in community care. When parents can't be present, they should still be able to parent. Standby guardianship allows courts to step in *only if necessary*, and **in a way that preserves the parent-child relationship and reflects the child's best interest**, just as the INA requires in the SIJS context.

In addition, S.95 provides a legal process that respects immigrant parents' voice and choice in determining who cares for their kids, **sending a clear message to our communities that the Vermont Legislature is committed to the rule of law**. That's essential in a state where just the threat to mixed-status families could of separation by ICE enforcement is having a chilling effect on our schools, health care centers, hospitals, workplaces, and economy.

**Our partners at Vermont Legal Aid are already supporting a surge** in immigrant families asking for help with emergency minor guardianship paperwork. This bill aligns our state law with the lived needs of those families and removes uncertainty for parents, guardians, and courts.

### 3. Federal Immigration Law Already Relies on Vermont Courts to Protect Children

**Our state courts already play a critical role in protecting immigrant children when parental reunification is not viable**. S.95 simply expands that protective function to cases where reunification *is* the goal—and separation is temporary due to immigration enforcement. This means our courts are already navigating complex family law matters for immigrant youth under **14 V.S.A. § 3098** and **33 V.S.A. § 5126**. Judges may still need support understanding SIJS or guardianship needs in this evolving legal landscape, but the framework is there. S.95 builds on this progress by offering a streamlined path for families facing temporary separation—not permanent loss of rights. **President George H. W. Bush signed this immigration pathway into law in 1990 to keep kids out of unnecessary DCF custody**.

The Immigration and Nationality Act (INA) recognizes that **state courts are best positioned to assess child welfare and family circumstances regardless of immigration status**. INA s 101(a)(27)(J). Special Immigrant Juvenile Status (SIJS) is one of the few immigration pathways that directly requires young people to first obtain protective findings in state court. Those findings include whether reunification with one or both parents is viable, and whether returning to the child's country of origin is in their best interest. In fact, the Vermont Supreme Court confirmed in 2019 that Vermont trial courts can — and should — make such determinations under **Kitoko v. Salomao**. Vermont codified this further with **Act 167 in 2020**, and later **Act 98 of 2022** which expanded trial courts' jurisdiction to issue special findings for vulnerable noncitizen youth up to age 21, to maximize youth's access to immigration protection to the fullest extent possible under federal law.

### 4. We've Seen This Work — and We're Ready to Scale

**We are a border state**. Our immigrant neighbors live within reach of federal enforcement but too often out of reach of justice. When ICE violates constitutional and statutory rights—as we have documented—the barriers to meaningful remedy are prohibitive. The federal system we see rapidly advancing toward authoritarianism decides who does and does not have status, but Congress left it to the States to decide what power that status holds over families' ability to navigate daily life. S.95 is a way Vermont can act proactively to minimize harm before it happens.

**By passing S.95, Vermont would send a clear message:** We are a system of government that holds close the rule of law, no matter whether the President is abandoning core democratic principles at the federal level. We use the legal tools already at our disposal — grounded in both state and federal law — to protect Vermont children and honor Vermont parents' intentions.

### 5. "Adverse Immigration Action" Definition is good enough

The intent here is to give Vermont’s trial courts confidence to act — to create standby guardianships in a range of real-life immigration enforcement scenarios where a parent is suddenly unavailable. And this definition captures the core situations we see in practice.

The legal question before the court isn’t whether the immigration action was lawful or whether relief is available — it’s simply: **Did an adverse immigration action occur — yes or no?** If yes, then the court can make findings and activate the guardianship.

The terms listed — DHS detention, removal orders, visa denials, denied reentry — are familiar in immigration law. The broader language ensures flexibility: whether a parent is detained, deported, or temporarily blocked from re-entering the U.S. after international travel. All of these have happened to Vermont families.

If we narrow the language too much — for example, limiting it to final orders of removal — we lose the ability to protect families during the most **urgent and common** moments: an arrest at a worksite, a detention at the border, a delayed reentry at the airport. Here’s how I think about it:

- Section (A) covers arrests for immigration violations;
- Sections (B) through (F) cover what usually happens next — detention, removal, visa denial, or exclusion.

Is it perfect legal taxonomy? Maybe not. But it reflects how immigration enforcement actually unfolds — and what families are facing. From a harm-reduction standpoint, it works.

And we need to name this: **ICE gets it wrong. A lot.** Courts often overturn unlawful arrests. But when that arrest happens, families need to know **who will care for the child that day.** This definition helps courts act in time.

## 6. Responding to Frequently Asked Questions (FAQs):

**Why “custodial parent” vs. singular “parents?”** Referring only to a 'custodial parent' may unintentionally exclude families where caregiving is shared informally or where a custodial parent still requires support. Using the term 'parent' is more inclusive and reflects how many immigrant families function.

**Must the emergency petition be defined broadly?** The critical moment is the moment of arrest, not weeks later. Federal courts frequently overturn unlawful ICE arrests, but that doesn’t help the child left behind. A broad standard ensures courts can act in time.

**How much process is due?** This is ultimately a constitutional question. The bill balances due process with timely child protection. Courts continue to act as the safeguard.

**What if parents don’t try to reunify or if “ICE leaves children behind?”** Courts already have the authority to review ongoing guardianships. Vermont law allows for modification or termination based on the child’s best interest. Judicial authority as the best placed factfinder remains in place.

**Does this exceed state jurisdiction or interfere with federal immigration enforcement?** No. The framework for this has existed since President George H. W. Bush signed SIJS into law in 1990. Vermont affirmed its role in these matters through laws passed in 2020 and 2022, after the Vermont Supreme Court confirmed trial court jurisdiction in 2019.

**Do children of immigrants with immigration violations deserve state court protection?** Immigration law is civil, not criminal. Very few immigration violations are crimes. Even if a parent is facing removal, putting their child in DCF custody punishes the child—and the taxpayer—not the parent. DCF has been clear: unnecessary separations hurt children and cost the state more. Standby guardianships are a low-cost, trauma-informed way to avoid this.

**Will this provision trigger unexpected costs to Vermont?** No, quite the opposite. If financial sustainability is a concern, let's remember Vermont urgently needs people to rebuild its economy. Immigration enforcement that results in child custody transfers costs taxpayers more and doesn't serve our long-term interests. Vermont Legal Aid's preparedness clinics already help families identify trusted adults, establish minor guardianships and POAs, and prepare their children for emergency care as part of their journey toward adulthood. Without this legal framework, kids risk DCF custody when parents are detained — creating extremely costly (to Vermont) and traumatizing long-term barriers to reunification. This is exactly why SIJS was created by President George H. W. Bush in 1990, and why Vermont strengthened its SIJS laws in 2020 and 2022. When good policy exists, we must be clear in implementing it.

**If jurisdiction already exists, why do we need this statute?** Trial courts are understandably hesitant to act on legislative gray areas in this political climate where immigration-related topics are hotly contested. We saw this in 2019 when SCOV had to intervene. S.95 gives courts clarity to act confidently and compassionately. Clarifying standby guardianship ensures children stay with trusted adults, avoid state custody, and remain in their homes and schools.

**Why are two organizations involved in this area of legal practice?** Vermont Legal Aid handles guardianship law. VAAP handles SIJS and other immigration protections that require state court findings on abuse, neglect, or abandonment. We work hand in hand — not in conflict.

**Funding or compliance concerns?** I lead an organization that complies with all state and federal nonprofit laws and am a member of the VBA, AILA, the Access to Justice Coalition, and more. After losing \$135,000 in federal funding, we've already begun pivoting to non-federal sources to sustain this work.

**Example legislation from other states?** The following examples show that Vermont's proposed language in S.95/H.98 aligns with a growing national standard: giving courts flexibility to recognize immigration-related emergencies as legitimate reasons for standby guardianship — especially to protect children in mixed-status families.

- **Maryland Code, Family Law § 13-901 et seq.** Maryland expanded its standby guardianship statute in 2018 to include immigration enforcement as a triggering event. Parents can designate a standby guardian if they face: arrest or detention by ICE or DHS; orders of removal, deportation, or voluntary departure; denial or revocation of visas, parole, or reentry permits; and denial of admission at the border. Offers broad protection and minimal court involvement up front.
- **D.C. Code § 16-4801 et seq.** DC allows for standby guardianship to be triggered by "administrative separation," including detention or deportation due to immigration enforcement. Treats immigration-related removal as equivalent to illness or incarceration in triggering child care transitions.
- **New York Surrogate's Court Procedure Act § 1726.** A parent may designate a standby guardian if they are subject to removal, deportation, or detention by immigration authorities. One of the earliest models; informs other state legislation and community practice guides.

Thank you for the committee's consideration of this commonsense legislation to reassure Vermont trial courts that their factfinding authority continues, regardless of the ways "immigration status" related matters become distractingly politicized at the federal level.

With gratitude,  
Jill

**Jill Martin Diaz, Esq.** (they/them, *elle/ellx* - [what's this?](#))  
Executive Director, Vermont Asylum Assistance Project  
Director of Legal Services, Connecting Cultures

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**Vermont Asylum Assistance Project** ([www.vaapvt.org](http://www.vaapvt.org)) increases VT noncitizens' awareness of and access to their immigration legal rights through direct services, pro bono coordination, public education, and advocacy. Visit our multilingual educational website to learn more.

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**From:** Jill Martin Diaz (they/elle)  
**Sent:** Thursday, May 08, 2025 10:11 AM  
**To:** Martin LaLonde  
**Subject:** Re: [External] Re: Testimony today

Hi Rep. LaLonde,

Rushing to catch my carpool to Montpelier for the press conference I'm participating in at noon but sharing the testimony notes here quickly and can convert into a formal memo in .doc format this afternoon. SIJS is at 101(a)(27)(J) of Title 8; Kitoko v Salamao (VT 2019) is on point; Acts 167 (2020) and 98 (2022) provide history for how this already happens in trial courts, and why. and Thank you!

<https://www.vaapvt.org/blog/s95h98-2025-to-secure-family-unity>

Jill

**Jill Martin Diaz, Esq.** (they/them, *elle/ellx* - [what's this?](#))  
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**From:** Martin LaLonde <MLaLonde@leg.state.vt.us>  
**Sent:** Thursday, May 8, 2025 9:55 AM  
**To:** Jill Martin Diaz (they/elle) <jill@vaapvt.org>  
**Subject:** Re: [External] Re: Testimony today

Jill,

Please send me the citation for the case you mentioned, unless it will be in your written testimony.

Thanks,  
Martin

*Representative, Chittenden 12, South Burlington, VT*  
*Chair, House Judiciary Committee*  
*Chair, House Ethics Panel*  
[martinlalondevt.com](http://martinlalondevt.com)

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**From:** Jill Martin Diaz (they/elle) <jill@vaapvt.org>  
**Sent:** Wednesday, May 7, 2025 11:19 AM  
**To:** Martin LaLonde <MLaLonde@leg.state.vt.us>  
**Cc:** Nate Biscotti <NBiscotti@leg.state.vt.us>  
**Subject:** [External] Re: Testimony today

[External]

Chair LaLonde,

Sorry to miss this! I'm on campus and flexible tomorrow morning before a press conference in the Cedar Room at noon. Grateful for the opportunity.

With care,  
Jill

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**From:** Martin LaLonde <MLaLonde@leg.state.vt.us>  
**Sent:** Wednesday, May 7, 2025 11:05 AM  
**To:** Jill Martin Diaz (they/elle) <jill@vaapvt.org>  
**Subject:** Testimony today

Jill,

What is your flexibility to have you testify after the floor today or tomorrow morning. I would like to make sure I get to Barb Prine's and Steve Crofter's testimony this morning since they are physically here and we need to take a short break.

Martin

*Representative, Chittenden 12, South Burlington, VT*  
*Chair, House Judiciary Committee*  
*Chair, House Ethics Panel*  
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