



### AB 1343 – Immigrant Defendants

#### IN BRIEF

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AB 1343 would codify what has already been stated by the U.S. Supreme Court and California courts alike, that defense counsel must provide accurate and affirmative advice on the potential immigration consequences of a proposed disposition and attempt to defend against such consequences. To ensure that immigration consequences are effectively considered, the bill states that the prosecution and defense must both contemplate the consideration of immigration consequences, in order to reach a just and fair resolution.

#### BACKGROUND

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In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the U.S. Supreme Court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. California courts have long come to the same conclusion, that defense counsel must investigate, advise regarding, and defend against, potential adverse immigration consequences of a proposed disposition.

In order for the consideration of immigration consequences to result in meaningful change, it is important for both the prosecution and defense to consider immigration consequences in plea negotiations. The Supreme Court agreed, stating that “informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties.”

The effects of even a minor criminal conviction on the life of an immigrant cannot be overstated. Immigrants can suffer irreparable consequences including loss of legal status, loss of ability to obtain legal status, inability to apply for citizenship (temporary or permanent), mandatory detention in immigration proceedings (no bond), or permanent deportation, and family separation. Once in deportation proceedings, the injustice continues,

where immigrants are often transferred to over 200 facilities across the country, often states away from friends or family, and without being provided an attorney. Offenses which can trigger these consequences can include possession of a controlled substance, petty thefts, and many more.

In many cases, these consequences could have been avoided or mitigated had the immigration consequences been considered in the criminal case. The result is disproportionate punishment, where immigrants are essentially punished twice for the same offense, with the immigration consequences often being far worse than the criminal punishment.

These negative effects can be particularly felt in California, where one out of every four persons is foreign-born. One out of every two children lives in a household headed by at least one foreign-born person. When parents are deported, children may be left parentless and are thereafter more likely to enter the criminal justice system themselves. The majority of these children are U.S. citizens. It is estimated that 50,000 parents of California U.S. citizen children were deported in a little over two years. Once a person is deported, especially after a criminal conviction, it is extremely unlikely that he or she is ever permitted to return. Thus, countless California families are needlessly separated each year.

#### SOLUTION

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California, home of the DREAM Act, has a legacy of statewide policies that support immigration reform. AB 1343 is continuing that legacy. The price of receiving legal services that are inaccurate or incomplete can be monumental for an immigrant. Codifying the US Supreme Court finding in *Padilla v. Kentucky* is a necessary, and affirmative, step in California’s immigration policy.

#### FOR MORE INFORMATION

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