



## ONE CALIFORNIA PROGRAM FUNDING FOR REMOVAL DEFENSE & POST-CONVICTION RELIEF

### SUMMARY

A 2016 study determined that two-thirds of all detained immigrants had no legal representation at any point in their removal proceedings. And yet, when represented by counsel, detainees won their cases 83% of the time. See Northern California Collaborative for Immigrant Justice, *Access to Justice* (Oct. 2014), at <https://www.lccr.com/wp-content/uploads/NCCIJ-Access-to-Justice-Report-Oct.-2014.pdf>. In 2016, advocates introduced SB 6 or the “Due Process for All Act,” to create a state-funded program to provide universal legal representation for immigrants in removal proceedings. The bill eventually turned into a budget measure, which guaranteed \$45 million-dollar investment every year through the 2019-2020 fiscal year to support certain immigration services including removal defense and post-conviction relief. This measure includes \$15 million allocated to qualified organizations representing immigrants in removal proceedings. Prior to this funding, many non-profits did not offer removal defense representation, but have since expanded their services to provide full scope immigration representation to people in removal proceedings.

The ILRC worked on this bill with a diverse coalition of immigration advocates, including the California Immigrant Policy Center; California API Budget Partnership; California Catholic Conference/Catholic Charities of California; California Rural Legal Assistance Foundation; Centro Legal de La Raza; Coalition for Humane Immigrant Rights; Immigrant Legal Resource Center; Mexican American Legal Defense & Educational Fund; Services, Immigrant Rights, and Education Network; and the Southeast Asia Resource Action Center. Senator Ben Hueso was the principal co-author for SB 6, which was stood together as part of a package of pro-immigrant bills that were introduced immediately following the presidential election of November 2016.

### ORIGINAL LANGUAGE

For advocates considering a similar bill, be sure to view the original legislative text of the Due Process for All Act as introduced to the legislature on December 5, 2016 here (the struck-through red text is the initial version of the bill): [http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=201720180SB6&cversion=20170SB699INT](http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180SB6&cversion=20170SB699INT).

### FINAL STATUTORY LANGUAGE

See Cal. Welfare & Institutions Code § 13303 at [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=WIC&division=9.&title=&part=3.&chapter=5.6.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=WIC&division=9.&title=&part=3.&chapter=5.6.&article=).

## TALKING POINTS

Here are some talking points for the Due Process for All Act to help you in drafting your own for your local context: ***Always lead with our values:*** Humanity and fairness

### ***Topline Messages:***

- Today and always, California should stand by its most cherished values of fairness and due process, and the many immigrants that call California home.
- Immigrants are deeply rooted in our lives and communities. Yet most immigrants facing deportation must fight their cases without an attorney guiding them through a grueling immigration maze – even though their futures and lives are at stake.
- The Due Process for All Act recognizes immigrants’ humanity and reinforces California’s commitment to due process, the idea that everyone deserves fair treatment in our courts.

### ***The importance of legal representation:***

- Everyone has the right to a fair court hearing. Having a qualified immigration attorney, helps give immigrants a fair shake at one.
- For immigrants fighting their deportation, having an attorney could mean the difference between being able to stay in the country and torn from their family, community, and the life they have built here.
  - In California, 83% of immigrants who were facing deportation but had a lawyer won their immigration cases, as compared to 24% of immigrants that did not have help from a lawyer.
  - Immigrants in immigration detention centers in California that had help from an attorney were more than 5x as likely to win their cases than immigrants that did not.
    - 68% of immigrants detained in immigration detention centers in California don’t have an attorney representing them.
  - In New York, a study found that immigrants that were represented by a lawyer were almost 6x more likely to win their cases than those that did not (detained or not)
- This bill is particularly important now that the new Administration has expressed its intent to ramp up deportation programs and target new classes of people for deportation. Now more than ever, California must fortify its commitment to ensuring that everyone gets a fair shot at fighting their deportation case.

### ***What Does the Due Process for All Act Do:***

- The Due Process for All Act is the last line of defense in preventing unjust deportations. It will keep loved ones together, employees working, and communities whole.
- California should do everything in its power to ensure immigrants, the heart and soul of our state, are not left to stand alone as they fight to stay in the country.
- It specifically:

- Creates state program to fund legal services for immigrants in deportation proceedings. The program would allow the Department of Social Services to issue grants to nonprofits that provide legal services or to contract with a nonprofit to administer the program.
- Creates a state trust fund to attract local government investments (like San Francisco) and private philanthropic contributions for legal representation.
- It is unclear, but there were approximately 7,400 detained and unrepresented immigrants who had their cases heard in California immigration court in 2015.

#### **FAQ:**

- *How many people would the Due Process for All Act help?*
  - It is unclear, but there were approximately 7,400 detained and unrepresented immigrants who had their cases heard in California immigration court in 2015.
- *But what about people with convictions? Shouldn't criminals be deported?*
  - Immigrants are deeply rooted in our families and communities. When we turn our backs and let immigrants stand alone as they fight to stay in the country, we violate our values of due process and open the door to painful mistakes.
  - We must remember that the people navigating this draconian immigration labyrinth alone are largely long-time Lawful Permanent Residents, asylum-seekers, veterans, and other community members that have already served their time. But most importantly, we must remember they are fellow Californians and human beings.
- *Isn't this a federal matter? Shouldn't this be something done by the federal government, if at all?*
  - Because the federal government has failed to provide legal help to most noncitizen immigrants facing deportation, California must step in and act to protect the due process rights of its residents.
  - Additionally, the new Administration will likely expand the categories of immigrants that will be targeted for deportation. Many of those immigrants will be placed in detention centers for unspecified periods of time, with limited access to legal representation. As the most immigrant-rich state in the nation, California will be particularly hard hit by large scale deportation efforts.
- *Why is this bill particularly important now?*
  - The Due Process for All Act is especially important now as the new Administration will likely expand the categories of immigrants that will be targeted for deportation. Many of those immigrants will be placed in detention centers for unspecified periods of time, with limited access to legal representation.
  - As the most immigrant-rich state in the nation, California will be particularly hard hit by large scale deportation efforts. Today and always, California should stand by our most cherished values and the many immigrants that call California home.

#### **MEDIA ARTICLES**

Here is a list of some of the media coverage for the Due Process for All Act and the subsequent Budget amendment:

- [California lawmakers want to provide attorneys to immigrants facing deportation. But who gets the help?](#), L.A. Times, March 2017. This article demonstrates why the Due Process for All Act is important and features direct impact stories to shed light on the quality of justice afforded to immigrants in America on account of not being guaranteed a government-appointed counsel in immigration proceedings.
- [Gov. Brown’s Budget Proposal Includes an Extra \\$15 Million to Help Californians Facing Deportation](#), L.A. Times, May 2017. This article was published at a strategic moment after AB 6 was amended and proposed through the Budget Act. It provides an overview of the various funding bills regarding immigration defense and the formal opposition and support for each.

## OTHER STATES’ SIMILAR LAWS

**New York:** The State of New York created the first statewide immigrant-defense fund, the Liberty Defense Project, which works with advocacy groups and legal service providers throughout the state to provide attorneys to immigrants. The state allocated \$10 million in its fiscal 2018 budget toward creating a legal defense fund “to ensure all immigrants, regardless of residency status, have access to representation.”

**Counties and Cities:** Certain local jurisdictions have also created universal representation funds. Lawmakers in San Francisco, Santa Clara, Los Angeles, Seattle, Chicago, New York City, Washington D.C., have allocated public funds for legal representation in immigration courts. In November 2017, the Vera Institute of Justice launched a multi-jurisdiction network dedicated to providing publicly-funded representation for people facing deportation, called the Safety and Fairness for Everyone (“SAFE”) Cities Network. The SAFE Cities Network includes: Atlanta, GA; Austin, TX; San Antonio, TX; Baltimore, MD; Prince George’s County, MD; Chicago, IL; Columbus, OH; Dane County, WI; Oakland/Alameda County, CA; Sacramento, CA; and Santa Ana, CA.

## STORY OF THE BILL - INTERVIEW/FAQ

Below is an interview with Rose Cahn, Post-Conviction Relief expert and lead ILRC attorney on this bill. This interview provides an overview of certain considerations for advocates considering similar bills in their state.

### ***What was the primary goal and motivation behind this bill?***

For years, advocates, including myself, had been looking into New York’s funding for removal defense as a model that other jurisdictions should replicate. In 2015 and 2016, coalitions of diverse stakeholders in both Southern and Northern California published reports detailing the crisis in removal defense representation in the state of California. These reports contained crucial data about the likelihood of obtaining immigration victories when represented by counsel, and how many people lose without counsel. The reports laid the groundwork to approach private funders and government agencies to begin funding removal defense.

### ***What research, if any, was necessary or helpful in drafting the bill?***

This started out as a Senate Bill and ended up as a budgetary measure, but we had been working with all different groups for years to address removal defense and how to expand funding. It was necessary to figure out the model, the scope, and how to expand capacity in the field. It is critical to engage with others and figure out what legal service providers are doing and how to build capacity on the ground, especially in key underserved areas. The key legal services providers had to be at the table to help draft a funding model that would work for their organizations, and we needed to make sure to invest in technical assistance organizations to help train all the new attorneys who would be hired to provide representation.

### ***What was the process for writing the bill language?***

We had come together before the election to begin sketching out potential legislation. But after the election,

those brainstorm sessions quickly turned into model legislation as our timeline became much more condensed. As always, every time the author considered an amendment, we consulted all of the co-sponsoring organizations before formulating a public response.

### ***What was the dream bill and what concessions were made?***

We wanted a bill which would provide funding for universal representation, meaning an attorney for every person in removal proceedings. The end bill provided \$45 million in funding for immigration services generally, including naturalization, asylum, post-conviction relief, removal defense, etc. The funding is prohibited in any case in which someone is convicted of a “serious or violent felony.” This means that if someone is convicted of an offense that is listed in California Penal Code § 667.5(c) or Health and Safety Code § 1192.7(c), then an immigration attorney can not use state funding to represent the individual. We also wanted to prioritize services to detained individuals who typically have more trouble accessing counsel. While certain concessions and funding restraints resulted in us falling short of our initial goal, we still made important strides toward obtaining crucial funding for removal defense and post-conviction relief.

### ***How did other organizations or individuals get involved and what were their roles?***

Many nonprofits across the state have been working toward expanding removal defense resources for many years. The ILRC has engaged in removal defense support for years, including publishing manuals and providing training to expand the capacity of other nonprofits to take these cases, so we collaborated throughout the process. There were endless stakeholder calls to go over each draft and there were times of feeling powerless once it became part of the budget process, since nonprofit stakeholders had less say over the manner in which any funds would be structured or distributed.

### ***Who were the likely and unlikely allies throughout the process?***

There were many organizations that provided support throughout the process, including the ACLU, California Immigrant Policy Center, California Immigrant Youth Justice Alliance, California Rural Legal Assistance Foundation, Centro Legal De La Raza, Human Rights Watch, Public Counsel, and the National Day Laborer Organizing Network.

### ***How did you frame the bill to get legislators on board?***

Access to counsel for removal defense was constantly raised, especially after *Franco-Gonzalez*, 767 F.Supp.2d 1034 (2010), which resulted in providing counsel for detained persons with serious mental disabilities facing removal. We really stressed the importance of legal representation for due process for immigrants.

A few years before our “universal representation” bill, the state began funding certain select forms of immigration services, including naturalization and DACA. This was a tactical mistake because the state was already funding representation in the most sympathetic cases. It would have been far smarter to have started with a big policy ask for universal representation, rather than leaving it up to advocates to push for more funding for tougher cases later down the line.

### ***What challenges did you face in passing the bill?***

The biggest challenge was addressing the proposed carve out for certain criminal convictions under Calif. Penal Code § 667.5. Certain legislators were considered with the “optics” of providing legal services to people based on their criminal history, whereas advocates wanted true universal representation for all. Some legislators claimed they did not want to defend “murderers or rapists” from deportation. The ILRC provided key substantive analysis, addressing the carve outs and explaining that even certain people with “serious and violent” convictions may still be eligible for immigration relief and denying access to counsel to people based on criminal convictions perpetuated discrimination against overpoliced black and brown communities. We came up with a compromise

where no one with a “serious or violent” felony conviction would be eligible for representation unless the legal services provider determined they presented “a potentially meritorious claim for relief.” That would allow the immigration services provider to determine when and how to allot their time. However, eventually that was excised from the bill.

Once it became part of the budget, we did not have trouble passing it.

***Do you have any tips on lobbying for this particular bill?***

Reach out to providers with lobbying experience and coordinate a strategy for combating problematic framing and talking points for local and state stakeholders. Also, think expansively about immigration services including post-conviction relief, technical assistance, prioritization of detained populations, and capacity building in underserved areas.

***How did you address misconceptions or opposition to the bill?***

In order to combat the “criminal” narratives, we had to keep focus on the issues of due process and human impact stories. It is especially important not fall into the divisive rhetoric of the “good versus bad” or “deserving versus undeserving” immigrants because it is ultimately about protecting due process for all immigrants facing deportation proceedings.

***Once the bill became a law, how did you go about monitoring and implementation? Were there any implementation issues that arose and if so, how were they resolved?***

Now that it passed through the budget it is up to the California Department of Social Services to distribute the funds to eligible non-profits. The biggest issues to address are ensuring quality representation by building capacity among nonprofits in underserved areas. In response, counties are funding public defenders and non-profits and many groups are on board to advocate for state and city funding.

***What was the biggest lesson learned and what would you do differently next time?***

The biggest lesson is to continue pushing for something because even if you don’t get what you set out for, you may still receive something that will help tee up the next opportunity.