

File No. 230055

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 5, 2023

Board of Supervisors Meeting Date _____

Cmte Board

- Motion
- Resolution
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- Form 126 – Ethics Commission
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OTHER (Use back side if additional space is needed)

- PDR Presentation 4/5/2023
- _____
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Completed by: Brent Jalipa Date March 30, 2023

Completed by: Brent Jalipa Date _____

1 [Public Employment - Amendment to the Salary Ordinance for the Office of the Public
 2 Defender - Immigration Legal Defense Support - FY2022-2023]

3 **Ordinance amending Ordinance No. 162-22 (Salary Ordinance Fiscal Years 2022-2023**
 4 **and 2023-2024) to reflect the addition of two positions (1.00 FTEs) in the Office of the**
 5 **Public Defender to support Immigration Legal Defense in Fiscal Year (FY) 2022-2023.**

6
 7 Note: Additions are *single-underline italics Times New Roman*;
 8 deletions are ~~*strikethrough italics Times New Roman*~~.
 9 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11
 12 Section 1. The hereinafter designated section and item of Ordinance No. 162-22
 13 (Salary Ordinance Fiscal Years 2022-2023 and 2023-2024) in Fiscal Year 2022-2023 FTE is
 14 hereby amended as follows:

15
 16 **Office of Public Defender**

17 Division ID: 232082 PDR Public Defender

18 Fund ID: 10020 GF Continuing Authority Ctrl

19 Project/Activity ID: 10033341/0001 PD Immigration Defense – Immigration Defense

20 Authority ID: 22377 Immigration Recovery

21

| Amendment # of FTE | Class and Item No | Compensation Schedule | | |
|--------------------|---------------------------------------|-----------------------|----------|----------------|
| 0.50 | <u>8173 Legal Assistant</u> | <u>\$3,486</u> | <u>B</u> | <u>\$4,562</u> |
| 0.50 | <u>8177 Attorney (Civil/Criminal)</u> | <u>\$5,335</u> | <u>B</u> | <u>\$9,346</u> |

| 1 | Amendment # of FTE | Class and Item No | Compensation Schedule |
|---|--|-------------------|-----------------------|
| 2 | | | |
| 3 | | | |
| 4 | Total – Office of Public Defenders FTEs | | <u>1.00</u> |

7 APPROVED AS TO CLASSIFICATION
8 DEPARTMENT OF HUMAN RESOURCES

7 APPROVED AS TO FORM
8 DAVID CHIU, City Attorney

9
10 By: _____/s/
11 CAROL ISEN
12 Human Resources Director

9
10 By: _____/s/
11 JONATHAN GIVNER
12 Deputy City Attorney

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|---|--|
| <p>Items 7 & 8 Files 23-0209 & 23-0055</p> | <p>Department: Public Defender’s Office (PDR)</p> |
| <p>EXECUTIVE SUMMARY</p> | |
| <p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • File 23-0209: is an ordinance that would appropriate \$1,051,298 of settlement award funding to the Public Defender’s Immigration Defense Unit. • File 23-0055: is an ordinance that would amend the Annual Salary Ordinance for Fiscal Years 2022-23 and 2023-24 to add two positions to the Immigration Defense Unit at the Public Defender’s Office, an attorney at 0.5 full-time equivalent (FTE) and a legal assistant (paralegal) at 0.5 FTE for a total of 1.0 FTE for FY 2022-23, increasing to 2.0 FTE for FY 2023-24. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The San Francisco Public Defender’s (PDR) Immigration Defense Unit, launched in 2017, provides legal representation for immigrants facing deportation in San Francisco’s federal immigration courts. Unlike criminal proceedings, immigrants in immigration court do not have a right to government-appointed counsel if they cannot afford one. • The unit currently has eight attorneys working on 149 immigration cases. According to the Department, the proposed addition of one attorney and one legal assistant would allow it to increase its workload by 25 to 50 immigration cases. • PDR participated in a class action lawsuit against U.S. Immigration and Customs Enforcement (ICE), which alleged that conditions at the Mesa Verde Detention Facility in Bakersfield, CA and at the Yuba County Jail violated immigrants’ constitutional rights by making it impossible to avoid COVID exposure. A settlement agreement provided \$1,051,298 in attorneys’ fees and litigation costs to PDR. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Assuming a May 1, 2023 start date for the new positions, the settlement award is likely sufficient to fund the new position and associated non-personnel costs through FY 2024-25, after which the positions would likely require General Fund support. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • According to a non-profit advocacy organization, immigrants who have legal representation are more likely to pursue relief (such as asylum) and more likely to win their cases compared to those without attorneys. Because there is no requirement for the City to provide these services, approval of the proposed ordinances is a policy matter for the Board of Supervisors. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed ordinance to reduce the 8177 Attorney from 0.5 FTE to 0.17 FTE and the 8173 Legal Assistant from 0.5 FTE to 0.17 FTE in FY 2022-23. • Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors. | |

MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance.

Administrative Code Section 2.1-1 states that the Board of Supervisors shall determine the maximum number of each class of employment in each of the various departments and offices of the City and County, and shall fix rates and schedules of compensation.

BACKGROUND

Immigration Defense Unit

The San Francisco Public Defender's (PDR) Immigration Defense Unit, launched in 2017, provides legal representation for immigrants facing deportation in San Francisco's federal immigration courts. The Unit has represented over 1,000 people in immigration detention since its launch and is one of three public defender programs providing legal representation to immigrants in the country according to the Public Defender's Office. The other two programs are provided by Alameda County and New York City.

Settlement Agreement

The Public Defender's Office participated in a class action lawsuit (*Zepeda Rivas vs Jennings*), which alleged that conditions at the Mesa Verde Detention Facility in Bakersfield, CA and at the Yuba County Jail violated immigrants' constitutional rights by making it impossible to avoid COVID exposure. A settlement agreement approved by a federal court in December 2021 required the U.S. Immigration and Customs Enforcement (ICE) undertake COVID mitigation measures, including releasing immigrants from detention. The settlement agreement also required ICE to pay \$4,000,000 in attorneys' fees, of which \$1,036,084 was provided to the San Francisco Public Defender's Office and \$56,033 in litigation costs, of which \$15,214 was provided to PDR.

DETAILS OF PROPOSED LEGISLATION

File 23-0209: is an ordinance that would appropriate \$1,051,298 of settlement award funding to the Public Defender's Immigration Defense Unit.

File 23-0055: is an ordinance that would amend the Annual Salary Ordinance for Fiscal Years 2022-23 and 2023-24 to add two positions to the Immigration Defense Unit at the Public Defender's Office, an attorney at 0.5 full-time equivalent (FTE) and a legal assistant (paralegal) at 0.5 FTE for a total of 1.0 FTE for FY 2022-23, increasing to 2.0 FTE for FY 2023-24.

Immigration Defense Unit Caseload and Staffing

According to the Public Defender's Office, the Immigration Defense Unit's litigation work includes removal defense, appeals, and Padilla motions. All immigration cases go to trial and many are

appealed, which is different from criminal proceedings where a client may have the option to take a plea instead of having their case go to trial. Currently, the San Francisco Immigration Defense Unit handles 149 removal cases, including 108 that are pending in immigration court and 41 on appeal, or approximately 18 cases per attorney.

The Immigration Defense Unit is comprised of eight attorneys and five support staff. The eight attorneys include one managing attorney, five removal defense attorneys, an appellate specialist, and a “cimmigration” specialist, who has expertise in criminal and immigration law. The five support staff include two social workers (or Court Alternative Specialists), one paralegal (or legal assistant), one investigator, and one clerk. Under the proposed ordinance, the number of positions in the Immigration Defense Unit would increase from 13 to 15. Existing and proposed staffing are shown in Exhibit 1 below.

Exhibit 1: Immigration Defense Unit Existing and Proposed Positions

| Job Classification | Existing | Proposed Increase | Total Proposed |
|-------------------------------------|-----------------|--------------------------|-----------------------|
| 8177 Managing Attorney | 1 | | 1 |
| 8177 Attorney | 7 | 1 | 8 |
| 8142 Investigator | 1 | | 1 |
| 8173 Legal Assistant | 1 | 1 | 2 |
| 8446 Court Alternative Specialist I | 2 | | 2 |
| 8106 Clerk | 1 | | 1 |
| Total | 13 | 2 | 15 |

Source: Public Defender’s Office, Proposed Ordinance

Proposed Increase to Staffing

According to Public Defender’s Office staff, the additional attorney and paralegal would allow the Unit to handle an additional 25 to 50 removal cases, increasing the total caseload to between 175 and 200.

The additional attorney would focus solely on appellate work, increasing the number of appellate cases the Immigration Defense Unit can handle and allowing removal defense attorneys to handle additional removal cases as removal defense attorneys currently spend a significant amount of time conducting appellate work according to Public Defender’s Office staff.

The additional paralegal would support the attorneys by drafting motions, creating trial binders and exhibits, taking notes during trials, and conducting follow-up on client meetings. The unit currently has one paralegal assigned to eight attorneys. With the proposed additional staffing, the Unit will have two paralegals assigned to nine attorneys which is closer to the ratio of one paralegal for every four attorneys recommended by the National Association for Public Defense, an association of more than 21,000 public defense practitioners.

Vacant Positions

According to Public Defender’s Office staff, the office is in the process of interviewing for three currently vacant positions in the same job classifications, one attorney and two paralegals, all of which will be assigned to criminal defense, not immigration defense.

FISCAL IMPACT

The cost of the two new positions and associated non-personnel costs is shown below in Exhibit 2 below. Costs in FY 2022-23 assume a May 1, 2023 start date for both new positions. Position costs include salary and benefits and are assumed to start at the top step. Non-personnel costs include travel to hearings across the Bay area and a specialized immigration database.

Exhibit 2: Proposed Spending

| | FY 2022-23 | FY 2023-24 | FY 2024-25 | Total |
|----------------------|-------------------|-------------------|-------------------|--------------------|
| 8173 Legal Assistant | \$28,592 | \$169,335 | \$176,108 | \$374,035 |
| 8177 Attorney | 54,691 | 322,886 | 335,801 | 713,378 |
| Non-Personnel Costs | 4,102 | 17,124 | 17,124 | 38,350 |
| Total | \$87,384 | \$509,345 | \$529,034 | \$1,125,763 |

Source: BLA Analysis

Note: fiscal impact for FY 2022-23 is based on a May 1, 2023 start date. Position costs for FY 2024-25 are assumed to increase by 4 percent, though actual costs may be different depending on the new labor agreements with the Municipal Attorneys Association and the International Federation of Professional and Technical Engineers, Local 21, the current versions of which expires June 2024. All position costs are budgeted at the top step of compensation.

The source of funding for the positions and associated non-personnel costs is the proposed appropriation of settlement award funding from the class action lawsuit against ICE, which totals \$1,051,298 or \$74,465 less than the total costs presented in Exhibit 2. However, actual position costs will likely be lower than presented due to delays in hiring and new hires starting at less than the top step of compensation. Costs not funded by the settlement award would likely require General Fund support.

Recommended Reduction of FTE in FY 2022-23

The two positions are each being added at 0.5 FTE for FY 2022-23, which assumes a start date of January 1, 2023. The Budget and Legislative Analyst recommends amending the proposed ordinance to reduce the two positions to 0.17 FTE based on the expected start date of May 1, 2023.

POLICY CONSIDERATION

Unlike criminal proceedings, immigrants in immigration court do not have a right to government-appointed counsel if they cannot afford one. Immigrants must find their own counsel or an authorized representative to represent them before an immigration judge and the Board of Immigration Appeals. Immigrants who have legal representation are more likely to pursue relief

(such as asylum) and more likely to win their cases compared to those without attorneys.¹ Detained immigrants may face detention for months and up to years, straining the detainee's and their family's economic, emotional, and physical wellbeing.

According to Department of Justice statistics, San Francisco had 5,467 cases in its docket as of September 30, 2022. Of these, 3,059 (56%) were represented and 2,408 (44%) not represented. Currently, the San Francisco Immigration Defense Unit handles 149 removal cases that are pending in immigration court or on appeal. Increasing staffing for the Immigration Defense Unit would allow the Unit to take on 25 to 50 more cases and improve outcomes for additional immigrants facing deportation. Because there is no requirement for the City to provide these services, approval of the proposed ordinances is a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed ordinance to reduce the 8177 Attorney from 0.5 FTE to 0.17 FTE and the 8173 Legal Assistant from 0.5 FTE to 0.17 FTE in FY 2022-23.
2. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors.

¹According to a 2016 [report](#) by American Immigration Council, a nonprofit, non-partisan advocacy group, of immigrants with deportation cases decided between 2007 and 2012: immigrants who were detained and had attorney representation were 11 times more likely to pursue relief (such as asylum) and twice as likely to obtain relief compared to those without attorneys; and immigrants who were never detained and had attorney representation were five times more likely to seek relief and five times more likely to obtain relief compared to those without attorneys.

SF Public Defender Immigration Unit

2023 Budget Supplemental

*Recovery of attorney fee
award in Zepeda-Rivas v.
Jennings)*



Immigration Unit, March 7, 2020

OVERVIEW

May 23, 2017:

The Public Defender launched its Immigration Defense Unit in 2017. The SF Board of Supervisors funded the unit to help provide legal representation for immigrants who were detained but couldn't afford to hire a lawyer in their deportation cases.



DONALD TRUMP

SF Public Defender Launches New Immigration Court Unit

By Bay City News • Published May 23, 2017 • Updated on May 23, 2017 at 11:41 pm



A newly created unit of defense attorneys dedicated to representing immigrants faced with deportation began work in San Francisco's federal immigration courts Tuesday. Mark Matthews reports.

A newly created unit of defense attorneys dedicated to representing immigrants faced with deportation began work in San Francisco's federal immigration courts Tuesday.

The new Immigration Unit in the San Francisco Public Defender's Office, one of only three such programs in the country, is the result of a deal negotiated by Supervisor Sandra Lee Fewer in March.

Mayor Ed Lee agreed to authorize the use of \$200,000 in salary savings in the public defender's budget to hire three deputy public defenders and a paralegal through the end of this year.

Immigration Defense Unit today

- ▶ **Deportation defense** for detained immigrants in California's immigration courts
 - ▶ 8 attorneys
 - ▶ 5 support staff (Two social workers, one paralegal, one senior legal process clerk, one investigator)
- ▶ **Padilla advice**: written legal consultation to public defenders about the immigration consequences of a criminal plea bargain, and assistance with mitigation of immigration consequences with District Attorney and Court.
- ▶ **Post-Conviction Relief (vacatur)** for immigrants who were illegally convicted because they were not advised about the adverse immigration consequences of their plea

Immigration Defense Unit

Universal Representation Model

- Do not screen cases
- Choose designated days to go into court, accept all cases on docket
- Work with Immigration Court and Non-Profit partners to improve quality of representation
- Client-focused representation, zealous representation in all cases

Challenges in removal defense practice

- ▀ Detention facilities in remote locations
- ▀ Video conference hearings
- ▀ Legal landscape worsening, especially during Trump Administration

Immigration Unit Evaluation Results (2017— 2019)

- 49.6 % released from custody (207 clients in 1.5 year period)
- 5 times more likely to win case than individuals without representation
- Significantly reduced bond amount
- More than 50% of clients been here more than decade
- More than 50% of clients have USC spouse or child

GOLDMAN SCHOOL
OF
PUBLIC POLICY
UNIVERSITY OF CALIFORNIA BERKELEY

Closing the Representation Gap for Detained Non-citizens: An Evaluation of the San Francisco Public Defender's Immigration Unit



Chelsca Muir
Spring 2019

The author conducted this study as part of the program of professional education at the Goldman School of Public Policy, University of California at Berkeley. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgements and conclusions are solely those of the author, and are not necessarily endorsed by the Goldman School of Public Policy, by the University of California or by any other agency.

COVID Pandemic – *Zepeda-Rivas v. Jennings*

Case No. 3:20-cv-02731 (Northern District Cal)

- ▶ ICE's Northern California detention facilities presented a direct risk to the lives and safety of individuals in custody
- ▶ Congregate living spaces, one facility housed near 100 people per housing unit, crammed together in double bunk beds less than six feet apart.
- ▶ Immigration Judges did not have legal authority to release individuals on bond due to health risks.
- ▶ Litigation was the only way to protect our clients. This is often a crucial tool to support immigrant families as a compliment to removal defense in immigration court.



COVID Pandemic – *Zepeda-Rivas v. Jennings* Case No. 3:20-cv-02731 (Northern District Cal)

- ▶ Public Defender Mano Raju authorized filing a lawsuit to protect the health and lives of people incarcerated
- ▶ TRO granted, set bail hearing process where individuals could seek release through federal court.
- ▶ 2020-2022: Filed 238 Bail Applications, 4363 SF Public Defender attorney hours
- ▶ Co-counseled with ACLU NorCal, LCCR, ACLU SoCal, Cooley LLP, Lakin & Wille LLP.

COURTHOUSE NEWS SERVICE

Judge Scolds ICE for Failing to Protect Detainees From Coronavirus

A federal judge on Tuesday skewered Immigration and Customs Enforcement for failing to take simple actions to ensure the safety of detainees at two California detention centers amid the Covid-19 pandemic.

NICHOLAS IOVINO / April 28, 2020



Detainees head toward the gym at Caliber Juvenile Detention Center in Shreveport in April 2020 (AP Photo/Vol Harvey, The Times)

SAN FRANCISCO (CN) — A federal judge on Tuesday skewered Immigration and Customs Enforcement for failing to take simple actions to ensure the safety of detainees at two California detention centers amid the Covid-19 pandemic.

ATTORNEY FEE AWARD

Zepeda-Rivas v. Jennings

Case No. 3:20-cv-02731 (Northern District Cal)

- ▶ Health and Safety Protections
- ▶ Detention population reduced significantly
- ▶ Attorney fee award to SF Public Defender: \$1,051,298

COVID-19 Immigration Health Employment

2 minute read - January 31, 2022 12:50 PM PST - Last Updated a year ago

ICE settles claims over COVID spread at California detention centers

By Daniel Wiessner



Immigrants sit in a cell for incoming ICE detainees at the Adelanto immigration detention center, which is run by the Geo Group, in Adelanto, California, U.S., April 13, 2017. REUTERS/Lucy Nicholson

Summary Law firms Related documents

- Lawsuit alleged unsafe conditions at cramped facilities
- Settlement includes population caps, vaccine mandate for staff
- Case resulted in hundreds of detainees being released

Budget Supplemental and Annual Salary Ordinance Amendment

1. **Budget Supplemental Ordinance** to appropriate the settlement award funding of \$1,051,298 to SF Public Defender
2. **Amendment to Annual Salary Ordinance** to allow SF Public Defender to use the settlement funds to add 1 attorney and 1 paralegal to the Immigration Unit for FY 2022-2024

THANK YOU!!!



From: [Conine-Nakano, Susanna \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Paulino, Tom \(MYR\)](#); [Lacoste, Lyslynn \(PDR\)](#); [Goossen, Carolyn \(PDR\)](#); [Heiken, Emma \(BOS\)](#)
Subject: Mayor -- Ordinance -- Immigration Legal Defense
Date: Tuesday, January 24, 2023 4:49:00 PM
Attachments: [Mayor -- Ordinance -- Immigration Legal Defense.zip](#)
[Mayor -- Ordinance -- Immigration Legal Defense.zip](#)

Hello Clerks,

Attached for introduction to the Board of Supervisors is an Ordinance amending Ordinance No 162-22 (Salary Ordinance Fiscal Years 2022-2023 and 2023-2024) to reflect the addition of two positions (1.00 FTEs) in the Office of Public Defender to support Immigration Legal Defense in Fiscal Year (FY) 2022-2023.

Please note that Supervisor Melgar is a co-sponsor of this legislation.

Best,
Susanna

Susanna Conine-Nakano
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