

<b>Items 6 and 7</b> <b>Files 16-1288 and 16-1289</b> <i>(Continued from February 16, 2017)</i>	<b>Department:</b> Office of the Public Defender (OPD)
---	---

**EXECUTIVE SUMMARY****Legislative Objectives**

- File 16-1288 would appropriate \$2,241,797 of General Reserve to the Public Defender's Office to create a legal unit to defend immigrants from deportation in FY 2016-17 and FY 2017-18; and File 16-1289 would amend the Annual Salary Ordinance to create 13 new positions in FY 2016-17 increasing to 15 positions in FY 2017-18 in the Public Defender's Office for the new immigrant defense unit.

**Key Points**

- The Board of Supervisors previously approved an appropriation of \$1.5 million to fund legal services to immigrants provided by community based organizations in FY 2016-17.
- The Public Defender is requesting 13 new positions in FY 2016-17 and 15 positions in FY 2017-18 to process an estimated 400 to 600 cases annually, providing legal services to immigrants facing detention and deportation.

**Fiscal Impact**

- The Budget and Legislative Analyst estimates that the Public Defender's Office will not be able to hire new positions in FY 2016-17 prior to May 1, 2017, therefore, the number of FTEs in FY 2016-17 should be reduced from 3.25 to 2.17.

**Policy Consideration**

- The Administrative Code provides for a General Reserve equal to 2.25 percent of General Fund revenues in FY 2017-18. According to the Five-Year Plan Update, projected deposits to the General Reserve are \$14.6 million in FY 2017-18.
- The Board of Supervisors previously appropriated \$1.5 million from the General Reserve in FY 2016-17 to fund community based organizations to provide legal services to immigrants, and the proposed ordinance would appropriate \$2.1 million from the General Reserve in FY 2016-17 and FY 2017-18, totaling \$3.6 million. In order to comply with requirements of the Administrative Code, the City will need to increase the FY 2017-18 deposit to the General Reserve by \$3.6 million, from \$14.6 million to \$18.2 million. The City will need to identify revenue increases or expenditure savings in order to increase the deposit to the General Reserve by \$3.6 million in FY 2017-18.

**Recommendations**

- Amend File 16-1288 to reduce the appropriation by (a) \$139,368 from \$2,241,797 to \$2,102,429; and (b) place FY 2017-18 salaries and fringe benefits of \$301,098 on Budget and Finance Committee reserve, pending submission by the Public Defender of actual FY 2016-17 caseload and projected FY 2017-18 caseload.
- Amend File 16-1289 to (a) reduce the FY 2016-17 FTE from 3.25 FTE to 2.17 FTE; and (b) designate seven of the 15 new positions (four 8177 Attorneys, two 8173 Legal Assistants, and one 8108 Senior Legal Process Clerk) as limited tenure for three years.
- 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.

## BACKGROUND

There are approximately 115,000 non-citizen residents of San Francisco<sup>1</sup> of which 44,000 are estimated to be undocumented immigrants<sup>2</sup>. Based on Immigration Customs Enforcement (ICE) fingerprint data, since 2010, an average of approximately 7,000 immigrants were deported each year from the San Francisco Immigration Court, which falls under the jurisdiction of the Executive Office for Immigration Review under the U.S. Department of Justice. The numbers of individuals who actually appear before the San Francisco Immigration Court are lower because many deportations occur without due process and without an opportunity to appear before a judge at a hearing in order to defend against removal. Based on the stated intent of the administration of President Trump, detentions and deportations are expected to expand in 2017.

In FY 2015-16, approximately 2,200 immigrants were detained during their deportation proceedings in the San Francisco Immigration Court, which is the only immigration court in Northern California. Immigration courts across the country have substantial backlogs, and San Francisco is no exception, with processing time for all cases averaging 704 days, or nearly two years, for cases completed in FY 2015-16. Immigrant detainees waited an average of 107 days, or approximately three months, for their case to be heard in San Francisco in FY 2015-16.<sup>3</sup> While in detention, individuals are separated from their families and unable to access materials and evidence to prepare for their cases.

The vast majority of individuals who are deported are not represented by an attorney in their immigration court proceedings. An analysis of immigration court records, conducted by the California Coalition for Universal Representation, found that 67 percent of detained immigrants in San Francisco lacked representation by an attorney over a three-year period from 2012 to 2015. The analysis found that only 5 percent of unrepresented detainees obtained relief (i.e., asylum, cancellation of removal, or termination of case) compared to 35 percent of represented detainees as a result of their proceedings in the San Francisco Immigration Court.

### Funding to Community-Based Organizations to Provide Legal Services

In January 2017, the Board of Supervisors approved a supplemental appropriation of \$1,500,000 to the Mayor's Office of Housing and Community Development (MOHCD), the City Administrator's Office of Civic Engagement and Immigrant Affairs (OCEIA), and the Human Rights Commission (HRC) to fund legal representation, pathways to citizenship, public outreach,

<sup>1</sup> U.S. Census Bureau American Community Survey (ACS) 2014 (5-Year Estimates)

<sup>2</sup> Migration Policy Institute (MPI) analysis of 2014 ACS

<sup>3</sup> TRAC Immigration, Syracuse University (<http://trac.syr.edu/immigration/>)

and rapid response social services to be provided by community-based organizations in FY 2016-17 (File No. 16-1344).

### The Public Defender's Office New Legal Unit for Immigration Services

The Public Defender's Office currently has one attorney dedicated to handle immigration cases, including some cases in immigration court. The Public Defender is proposing to create a new legal unit staffed with 15 new positions of 9 attorneys, 4 paralegals, and 2 senior legal process clerks to handle cases of detained immigrants in immigration court. The new legal unit would also handle some impact litigation cases<sup>4</sup>. In addition to handling detained deportation cases, the Public Defender will work with community-based organizations in the following:

- Advise non-citizens of the immigration consequences of criminal convictions.
- Create a standard referral form to refer cases between the Public Defender and the collaborative community-based organization members, and refer cases where appropriate.
- Begin working on clients' immigration matters while they are still in county custody to maximize the efficiency of the immigration cases.
- Collaborate on post-conviction relief, where appropriate.
- Assist community-based organizations in obtaining criminal court documents, where relevant.

The 9 attorneys are expected to handle a total of 400 to 600 detainee cases per year. According to Ms. Angela Auyong, Public Defender Office Manager, the average time expected to be spent on each detained immigrant case will be approximately 30 attorney hours, 17 paralegal hours, and 7 legal process clerk hours.

The Public Defender proposes to provide universal representation for detainees with proceedings at the San Francisco Immigration Court. As noted above, there were approximately 2,200 proceedings for detained immigrants at the San Francisco Immigration Court in FY 2015-16, and approximately two-thirds of detained immigrants at the San Francisco Immigration Court lack legal representation, so approximately 1,500 detained immigrants were unrepresented in FY 2015-16. The Public Defender's Office will establish criteria to determine which cases it will take, and estimates representation by the Public Defender's Office for up to 600 detainee cases per year.<sup>5</sup>

### DETAILS OF PROPOSED LEGISLATION

#### File 16-1288: Supplemental Appropriation Ordinance

The proposed ordinance would appropriate \$2,241,797 of General Reserve to the Public Defender's Office to create a legal unit to defend immigrants from deportation in FY 2016-17 and FY 2017-18, as shown in Table 1 below. The appropriation amount for:

<sup>4</sup> Impact litigation cases are typically class action lawsuits or individual claims with broader significance intended to influence public policy.

<sup>5</sup> According to the Public Defender's Office, three community based organizations (Dolores Street Community Services, Pangea, and Asian Law Caucus, Asian Americans Advancing Justice) currently handle approximately 60 to 80 cases per year.

- FY 2016-17 of \$218,105 partially funds 13 positions with total salary and fringe benefits of \$418,105. The balance of \$200,000 is funded from salary savings in the Public Defender's FY 2016-17 budget; and
- FY 2017-18 funds 15 positions with salary and fringe benefits of \$2,023,692.

**Table 1: Sources and Uses of Funds**

<b>Source of Funds</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>Total</b>
General Reserve (File 16-1288)	\$218,105	\$2,023,692	\$2,241,797
<b>Uses of Funds</b>			
Salaries and Fringe Benefits	\$218,105	\$2,023,692	\$2,241,797

**File 16-1289: Annual Salary Ordinance Amendment**

The proposed ordinance would amend the Annual Salary Ordinance to add 13 new positions in the Public Defender's Office, equal to 3.25 full-time equivalent (FTE) positions in FY 2016-17 and 15 new positions in FY 2017-18 equal to 15.00 FTE positions, as shown in Table 2 below.

**Table 2: Proposed New Positions in the Public Defender's Office**

		<b>Number of Positions</b>	<b>FY 2016-17 FTEs</b>	<b>Number of Positions</b>	<b>FY 2017-18 FTEs</b>
8182	Head Attorney	1	0.25	1	1.00
8177	Attorneys	6	1.5	8	8.00
8173	Legal Assistant	4	1.0	4	4.00
8108	Senior Legal Process Clerk	2	0.5	2	2.00
<b>Total</b>		<b>13</b>	<b>3.25</b>	<b>15</b>	<b>15.00</b>

**FISCAL IMPACT****New Positions in the Public Defender's Office**

The supplemental appropriation ordinance appropriates \$2,241,797 to create 13 new positions in the Public Defender's Office in FY 2016-17, increasing to 15 positions in FY 2017-18, as shown in Tables 1 and 2 above.

**Timeline to Hire New Positions**

Since the Public Defender's Office cannot begin the hiring process until the requested appropriation is approved by the Board of Supervisors, and approval would occur on March 14, 2017, at the earliest, the Budget and Legislative Analyst assumes that all new hires will start on May 1, 2017 instead of April 1, 2017 as provided in the proposed ordinance.

The 8177 Attorney and 8182 Head Attorney positions are at-will positions exempt from the civil service hiring process. In the past, the Public Defender's Office has reported that the department can fill vacant attorney positions within about one month. The 8173 Legal Assistant (paralegal) and 8108 Senior Legal Process Clerk positions are civil service positions. According to

Ms. Auyong, the Public Defender's Office intends to use an existing eligible list to expedite the process of filling those positions.

#### Immigrant Defense Caseload

As noted above, the Public Defender's Office estimates immigrant defense caseload of 400 to 600 cases per year. The proposed ordinance would fund:

- 13 positions in FY 2016-17 (based on an annual caseload of 400); and
- 15 positions in FY 2017-18 (based on an annual caseload of 500).

As noted above, the Budget and Legislative Analyst estimates that the Public Defender's Office will not be able to hire new positions in FY 2016-17 prior to May 1, 2017 whereas the proposed ordinance provides for hire dates of April 1, 2017. Therefore, the Budget and Legislative Analyst recommends reducing the number of FTEs in FY 2016-17 from 3.25 to 2.17, as shown in Table 3 below.

**Table 3: Proposed Reduction in FTEs in FY 2016-17**

	FY 2016-17		
	Annual Positions	File 16-1289	Proposed (2 months)
8182 Head Attorney	1.00	0.25	0.17
8177 Attorney	6.00	1.50	1.00
8173 Legal Assistant	4.00	1.00	0.67
8108 Senior Legal Process Clerk	2.00	0.50	0.33
Total FTEs	13.00	3.25	2.17

The Budget and Legislative Analyst's recommendation would result in a reduction of \$139,386 in the requested appropriation, as shown in Table 4 below, from \$2,241,797 (see Table 1 above) to \$2,102,429.

**Table 4: Budget and Legislative Analyst's Recommendation**

	FY 2016-17				
	FTE	Total	FTE	Total	Savings
8182 Head Attorney	0.25	\$54,487	0.17	\$36,324	
8177 Attorney	1.50	219,246	1.00	146,164	
8173 Legal Assistant	1.00	103,385	0.67	68,923	
8108 Senior Legal Process Clerk	0.50	40,988	0.33	27,325	
Total	3.25	\$418,105	2.17	\$278,737	
Salary Savings in FY 2016-17		(200,000)		(200,000)	
<b>Total</b>		<b>218,105</b>		<b>78,737</b>	<b>\$139,386</b>

As shown in Table 2 above, the proposed appropriation includes six 8177 Attorney positions in FY 2016-17, which increases by two position in FY 2017-18 to eight 8177 Attorney positions. Because the actual number of cases for detained immigrants to be handled by the Public Defender's Office is not known, the Budget and Legislative Analyst recommends placing FY

2017-18 salaries and fringe benefits of \$301,098 for the two additional 8177 Attorney positions to be added in FY 2017-18 on Budget and Finance Committee reserve, pending submission by the Public Defender of actual FY 2016-17 caseload and projected FY 2017-18 caseload.

Additionally, because the precise number of positions for the ongoing need for the new legal unit to represent detained immigrants in deportation proceedings is not yet known, the Budget and Legislative Analyst recommends approving seven of the 15 new positions (four attorneys, two legal assistants, and one senior legal process clerk) as limited tenure for three years.

### POLICY CONSIDERATION

Administrative Code Section 10.60(b) provides for a General Reserve of 2.25 percent of General Fund revenues in FY 2017-18. According to the Five-Year Plan Update, prepared jointly by the Mayor's Office, Controller's Office, and Budget and Legislative Analyst Office in December 2016, projected deposits to the General Reserve are \$14.6 million in FY 2017-18.

The Board of Supervisors previously appropriated \$1.5 million from the General Reserve in FY 2016-17 to fund community based organizations to provide legal services to immigrants, and based on the above noted recommendations of the Budget and Legislative Analyst, the proposed ordinance would appropriate \$2.1 million from the General Reserve in FY 2016-17 and FY 2017-18, totaling \$3.6 million. In order to comply with requirements of the Administrative Code, the City will need to increase the FY 2017-18 deposit to the General Reserve by \$3.6 million, from \$14.6 million to \$18.2 million. The City will need to identify revenue increases or expenditure savings in order to increase the deposit to the General Reserve by \$3.6 million in FY 2017-18.

### RECOMMENDATIONS

1. Amend File 16-1288 to reduce the appropriation by (a) \$139,368 from \$2,241,797 to \$2,102,429 (see Table 4 above); and (b) place FY 2017-18 salaries and fringe benefits of \$301,098 on Budget and Finance Committee reserve pending submission by the Public Defender of actual FY 2016-17 caseload and projected FY 2017-18 caseload.
2. Amend File 16-1289 to (a) reduce the FY 2016-17 FTE from 3.25 FTE to 2.17 FTE (see Tables 3 and 4 above); and (b) designate seven of the 15 new positions (four 8177 Attorneys, two 8173 Legal Assistants, and one 8108 Senior Legal Process Clerk) as limited tenure for three years.
3. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors.