

# The Brave 8 Secure Due Process Protection For All Minors in San Francisco

The San Francisco La Raza Lawyers Association (“Association”) stands with the eight members of the San Francisco Board of Supervisors (the “Brave 8”) who have valiantly demonstrated leadership and courage in adopting San Francisco ordinance (File Number 09-0132) on November 10, 2009 (the “Ordinance”). The Ordinance requires that a person under the age of eighteen accused of committing a crime be convicted first prior to being turned over to Immigration authorities.

Unfortunately, Mayor Newsom vetoed this humane Ordinance. The Brave 8 however, stood up for justice and did the right thing when they overrode the Mayor’s veto last week. “San Francisco children who did not come to this country on their own, who are often exploited and the most vulnerable in our society deserve the protection Supervisor Campos’ legislation provides. We applaud the Brave 8 and commend them for standing up for the civil and human rights of some of the most vulnerable members of our San Francisco community, namely young immigrant children” stated Niki Solis, the Association’s President.

The Ordinance provides due process protection for all minors pursuant to the Welfare & Institutions Code. “The members of the Board of Supervisor are to be commended for understanding and recognizing the distinct legal and policy differences between the treatment of adult and juvenile defendants in the criminal justice systems,” added President Solis.

Specifically, the purpose of the Welfare & Institutions Code is to rehabilitate minors, provide family reunification, and individual dispositions that promote the minor’s best interests. “Juvenile records *must* be kept confidential unless a Court orders release of the information if required by state or federal law” states Eli Aramburo, the Association’s General Counsel.

In keeping with Due Process under the laws of the state of California, Supervisor David Campos affirmed that the Ordinance complies with state law which requires that confidential information regarding minors detained shall not be released without a court order and a finding that the minor is guilty of a felony violation. In addition, the Ordinance is consistent with the San Francisco City of Refuge Ordinance of 1989.

According to the Association’s General Counsel, “a blanket policy referring all undocumented youth to ICE before their case has been adjudicated by the courts is contrary to the policy and legal procedures set forth for juveniles in the Welfare & Institutions Code.” Section 738 expressly provides that where the residence of a minor placed on probation is a foreign country, the court may order the minor sent to his parents, guardians, or relative in the foreign country, and may order transportation or accommodation furnished, with or without an attendant, as the Court deems necessary. (In re Manuel (1989) 215 Cal.App.3d 48.)

The Association’s position is that Section 738 does not infringe on the federal government’s exclusive power over immigration matters recognizing the power of state courts to make individual determinations that promote the best interests of each minor.

The resolution passed by the Supervisors recognizes that many minors are in this country due to decisions by their parents who fled countries because of political and economic persecution. Minors should not be separated from parents and family and deported to countries where they may have no relatives or may be endangered without due process of the law.

The “Brave 8” San Francisco Supervisors who voted in favor of Ordinance (File Number 09-0132) are Supervisors David Campos (Author), John Avalos, David Chiu (President of the Board), Chris Daly, Bevan Dufty, Eric Mar, Sophie Maxwell, and Ross Mirkarimi. Voting against the Ordinance were Supervisors Carmen Chu and Sean Elsbernd. Supervisor Michela Alioto-Pier dissented in committee and was excused from the vote.

San Francisco La Raza Lawyers Association is a nonprofit resource for and advocates on the behalf of the Latino legal community in the Bay Area. With multiple active committees and a number of annual events, the Association provides attorneys with a number of opportunities to network, engage in advocacy, and give back to their communities. In addition to promoting the diversification of the legal profession, the Association’s work fosters the exchange of ideas and information among members of the legal profession, the judiciary and the community that enable reform in the law necessary to the administration of justice.

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