An Initiative of the People of Pima County, Arizona;
Relating to Representation of Residents in Removal or Deportation Proceedings;
Amending the Pima County Code by Addition of Title 22,
Office of Immigration Representation.

OFFICIAL TITLE

Pima County Justice For All

100-WORD SUMMARY

Pima County residents facing removal or deportation have a Constitutional right to an attorney. But if they cannot afford one, no attorney is provided. Fighting the Federal government alone, their fundamental rights can be violated. This causes injustices—unwarranted family separations, orphaned children, employers without employees, fear of law enforcement, loss of taxpaying residents, and poverty. This initiative provides legal representation to indigent residents in removal and deportation proceedings, using sliding scale fees, grant funding, and funds available to the County, to protect due process and fundamental rights, fight poverty, and protect the health, safety, and welfare of our community.

FULL TEXT OF PROPOSITION

Be it enacted by the People of the County of Pima, the Pima County Code is amended by the addition of a new title to read:

Title 22: Office of Immigration Representation.

22.01.010 Short title.

The ordinances codified in this title and future ordinances enacting rules and regulations may be cited and shall be known as the Office of Immigration Representation ("OIR") code.

22.01.020 Declaration of findings and authority

A. Pima County residents have a Constitutional right to an attorney or representative when facing removal or deportation, but they must hire an attorney or representative at their own expense;

B. The detrimental impact of immigration proceedings on Pima County families and the community is profound. The People of Pima County adopt the findings of the following:

1. Boyce, Geoffrey Alan & Launius, Sarah *The Immigration Dragnet and the Dispossession of Household and Community Wealth in the United States*, University of Arizona & Earlham College (October 2019).

2. American Psychological Association, Society for Community Research and Action, *Statement on the Effect of Deportation and Forced Separation on Immigrants, their Families, and Communities*, Am. J. Community Psychol. 62:3-12 (2018).

C. In particular, the People of Pima County recognize and adopt the findings of the Boyce and Launius study, in which those researchers determined that:

1. An immigration-related arrest costs a Pima County household an average of more than $24,000 in lost wealth and income; and,

2. A resident facing removal or deportation without an attorney is 5.4 times more likely to lose his or her case than a resident with an attorney.

D. The People of Pima County also endorse the opinion of the president emeritus of the National Association of Immigration Judges, Judge Dana Leigh Marks, who states that immigration cases are akin to "death penalty cases in a traffic court setting."

E. Because Pima County is authorized to adopt provisions and create programs necessary to preserve the health of the County and provide for the expenses thereof, to make and enforce all local, police, sanitary and other regulations not in conflict with general law, and do and perform all acts necessary to enable the County to participate in the economic opportunity act, the People of Pima County approve the establishment of the Office of Immigration Representation to combat the adverse effects of immigration proceedings on the health, safety, and welfare of our community and to fight the poverty these proceedings induce.

22.01.030 Definitions.

A. "Applicant" means a resident in immigration proceedings, his/her duly appointed representative, or the resident's household member (if the resident is detained or incarcerated) completing an application for representation.

B. "Application" means a statement made under oath by an applicant for the purposes of obtaining representation for a resident in immigration proceedings.

C. "Application form" means a form(s) prescribed by the Directing Attorney of the Office of Immigration Representation for the determination of residency,

indigency, and fees for the purpose of obtaining representation in an immigration proceeding.

D. "Authorized representative" means a person legally authorized by a resident to act on the resident's behalf for purposes of completing an application form.

E. "Attorney" means an attorney who is licensed to practice law, whose license is in good standing, and who is authorized to practice law in immigration proceedings.

F. "Eligible" means satisfying the criteria for residency and indigency, as set forth in the written guidelines of indigency.

G. "Immigration proceeding" means any proceeding before the Executive Office of Immigration Review, Board of Immigration Appeals, or the Federal courts regarding the removal or deportation of a Pima County resident pursuant to Title 8 of the U.S. Code.

H. "Income" means the gross amount of all consideration received by the applicant and the applicant's household regardless of source or form, less estimated federal tax, state tax, and FICA. Loans with a legal, written obligation for repayment, portions of grants and scholarships awarded and expended for payment of education expenses, and, if self-employed, the cost of wages (except wages paid to self and household members), business supplies and materials actually expended shall not be included in income.

I. "Indigency" means an inability to pay for an attorney in private immigration practice in Pima County without incurring substantial economic hardship.

J. "Representative" means a non-attorney who is an "accredited representative," authorized to represent respondents in immigration proceedings.

K. "Representation" means to act as counsel for the Pima County resident who is a respondent in an immigration proceeding, to seek legal relief from removal or deportation on behalf of the respondent, including affirmative application for immigration benefits through U.S. Citizenship and Immigration Services, and to pursue any other course of conduct deemed necessary and ethically required to provide effective representation.

L. "Resident" means a person who has established a primary domicile in Pima County.

22.01.040 Office of Immigration Representation.

A. Pima County shall establish an Office of Immigration Representation to provide representation on behalf of any indigent Pima County resident in immigration proceedings.

B. The Office of Immigration Representation shall consist of a Directing Attorney and as many attorneys, representatives, and supporting staff as reasonably necessary to provide sufficient representation to indigent Pima County residents facing immigration proceedings.

C. The Directing Attorney shall establish written guidelines for determining indigency based on the following factors regarding the resident and the resident's household members:

1. Income and expenses;

2. Assets and debts;

3. Complexity of the representation and costs associated with securing an attorney or representative in the private market;

4. Current federal poverty guidelines and county-based living wage information;

5. Receipt of need-based government benefits;

6. Whether the resident is currently detained or incarcerated;

7. Whether the resident is unable to post bail or bond; and,

8. Any additional factor deemed relevant by the Directing Attorney.

The Directing Attorney shall review the indigency guidelines yearly, and if in the discretion of the Directing Attorney, changed circumstances warrant a revision to the guidelines, the Directing Attorney shall implement such revisions, which shall apply to subsequent applications.

D. The Directing Attorney shall establish a written fee schedule for residents receiving representation from the Office of Immigration Representation.

1. The fee schedule shall be established based on the overall budget of the Office of Immigration Representation, the cost of providing representation, and the indigency factors provided in subsection 22.01.040(C).

2. The fee schedule shall be used to determine reasonable fees for each applicant as consideration for the representation, in light of the factors provided in subsection 22.01.040(D)(1) and the individual applicant's level of indigency, as determined using the factors provided in subsection 22.01.040(C).

3. The Directing Attorney shall review the fee schedule yearly, and if in the discretion of the Directing Attorney, changed circumstances warrant a revision to the fee schedule, the Directing Attorney shall implement such revisions, which shall apply to subsequently assessed fees.

4. Nothing in this subsection shall be construed to prevent or prohibit the Office of Immigration Representation from assessing only nominal fees.

E. Consistent with the provisions of the Pima County Code, the Pima County Board of Supervisors, County Administrator, and Directing Attorney are authorized to seek, apply for, and receive federal, state and public grants to supplement the budget of the Office of Immigration Representation, provided the acceptance of said grant funding does not limit the scope of residents eligible for representation by the Office of Immigration Representation. The Board of Supervisors may also allocate revenues to the Office of Immigration Representation.

F. The Directing Attorney may establish a volunteer program to obtain assistance in the representation of residents in immigration proceedings, including but not limited to the assistance of volunteer (*pro bono*) attorneys, representatives, and law students. The Directing Attorney may enter into collaborations with other public and private entities to further the purposes of this title.

G. The Directing Attorney may establish any other rule or procedure necessary to facilitate or pursue the purposes of this title, including rules or procedures related to the application process, disposition of applications, redetermination of eligibility and fees, and termination.

22.01.050 Application Process.

A. Any person who desires representation will be given unrestricted opportunity to apply for eligibility, and the Office of Immigration Representation will assist the applicant in completing the application form when necessary or requested.

B. Application forms provided by the Office of Immigration Representation will be used to determine residency, indigency, and fees.

C. Applications shall be made under oath and false statements made in applications shall subject the person making them to penalties provided by law.

D. If a foreign language interpreter is needed or if other special assistance is needed in completing the application process, the Office of Immigration Representation shall make that help available.

E. The Office of Immigration Representation will inform each applicant in writing of the procedures and requirements of the eligibility process, including but not limited to, the following:

1. Confidentiality of information provided;

2. Determination and notification process;

3. Meaning and significance of the representation agreement and declaration requiring his/her sworn oath on the eligibility application;

4. Right of redetermination of eligibility and fees;

5. Requirements to report changes in factors related to residency and indigency; and,

6. The scope of representation and procedure for discontinuing representation.

F. For the purpose of establishing residency, indigency, and fees, the Office of Immigration Representation may obtain additional information from the applicant and/or collateral sources as necessary. The applicant seeking representation shall be the principal source of information and is responsible for providing all information and documentation reasonably required by the Office of Immigration Representation for determination of residency, indigency, and fees. This shall include authorizing the Office of Immigration Representation to obtain additional information regarding the applicant's residency and indigency.

G. The applicant is responsible for providing any documentation necessary to complete the application within thirty days of the date of application.

H. The applicant is responsible for notifying the Office of Immigration Representation of changes related to residency and indigency within ten calendar days of such change.

I. The application process and assessment of fees shall be conducted in accordance with this title, the written indigency guidelines, and the written fee schedule in effect at the time of the application.

22.01.060 Disposition of Application.

A. Immediately upon application, the Office of Immigration Representation may take whatever actions are immediately necessary to prevent prejudice to the resident in the immigration proceeding.

B. The residency, indigency, and fee determination shall be made within thirty days of application, unless the Office of Immigration Representation and the applicant agree to a thirty-day extension.

C. Representation will be denied on all application forms which are not completed within thirty days, unless the Office of Immigration Representation and the applicant agree to a thirty-day extension.

D. When all residency and indigency requirements have been met, the resident will be approved for representation by the Office of Immigration Representation throughout the entire course of the resident's immigration proceedings, unless and until a withdrawal of representation is filed with the courts in accordance with applicable law and ethical requirements. The following information will be given in writing to a resident determined eligible for representation:

1. Scope and duration of representation;

2. The fees assessed for said representation;

3. Duties of the resident as a client of the Office of Immigration Representation; and,

4. The freedom of the resident to terminate the attorney-client relationship and circumstances under which the attorney-client relationship may be terminated by the Office of Immigration Representation.

E. When either the residency or indigency criteria are not met, eligibility for representation will be denied. In cases of eligibility denial, the Office of Immigration Representation shall withdraw from representation and the following written information shall be given to the applicant and resident:

1. Reason(s) for denial, citing the basis for the denial; and,

2. Right to seek redetermination of this decision, and how to seek redetermination.

22.01.070 Redetermination of Eligibility and Fees; Termination.

A. Eligibility will be redetermined in the following cases:

1. At the time the Office of Immigration Representation is notified by the applicant or other official source of a change or additional information concerning indigency or residency as originally reported by the applicant or resident.

2. In the case of an application that was originally denied, at the time of the applicant's reapplication, provided the applicant has remedied the reason for denial.

3. When there is sufficient proof that the previous application has been processed incorrectly.

B. Eligibility and representation will be terminated in the following cases:

1. Failure of applicant or resident to provide complete information regarding residency or indigency when a redetermination indicates ineligibility or when an applicant or resident fails to cooperate with the redetermination process, unless good cause exists to continue representation.

2. Provision of false information regarding residency and indigency when a redetermination indicates ineligibility or when the applicant or resident fails to cooperate with the redetermination process, unless good cause exists to continue representation.

3. Failure to notify the Office of Immigration Representation of any changes in residency or indigency information which would cause a change in eligibility, within thirty calendar days of such change(s), unless good cause exists to continue representation.

C. Fees will be redetermined at the request of the applicant or resident in the following cases:

1. The applicant or resident demonstrates that the fees assessed were calculated incorrectly.

2. The applicant or resident furnishes additional information regarding indigency warranting a redetermination of fees.

During a redetermination of fees, the fee schedule in effect at the time of the application shall be used to determine whether the originally assessed fees were correctly calculated.

22.01.080 Nondiscrimination and Confidentiality.

A. No individual will be denied eligibility on the basis of race, color, religion, sex, gender identity, sexual orientation, disability, or nationality. Nor shall any individual be subjected to unlawful segregation or separate treatment in any matter related to the eligibility or fee determination on the basis of race, color, religion, sex, gender identity, sexual orientation, disability, or nationality.

B. Any and all information collected by the Office of Immigration Representation during the course of application and representation shall remain confidential and protected as required by Arizona Supreme Court Rule 42.