

May 20, 2013

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Support Senator Coons' Amendment 5 to S.744 regarding Right to Discovery by Immigrants in Removal Proceedings

Dear Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

We, the undersigned organizations, urge you to support Senator Coons' Amendment 5 to S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act. The amendment would ensure immigrants in removal proceedings have better access to information about their cases through a discovery process that requires the government to turn over copies of the individuals' Alien Files (A-Files)—information that they currently obtain, if at all, through the very slow, backlogged, and ultimately unhelpful Freedom of Information Act (FOIA) process.

Access to this information is already mandatory in the Ninth Circuit, which ruled in *Dent v. Holder* that the government is required to turn over copies of documents in an individual's A-File in cases where removability is contested. The court noted that the right to a fair hearing is offended when the government fails to provide important relevant evidence about an individual's admission or presence in the United States that could prove, for example, that a person has been naturalized or is otherwise not removable.

Unfortunately, Immigration and Customs Enforcement (ICE) has refused to apply *Dent* fully in the Ninth Circuit or to implement this common-sense policy elsewhere, claiming instead that A-Files should be obtained through FOIA requests. That process places a heavy burden on individuals, many of whom are unrepresented by counsel, by requiring them to seek out and specifically request particular documents. They are not only left to navigate the complicated FOIA process on their own without legal assistance, but also must then wait for the government to respond. The wait is often so long that it requires requests for continuances which, for those in detention, means remaining in detention even longer, at significant expense to the government. Continuances also clog already overburdened immigration court dockets, compounding systemic inefficiencies.

Senator Coons' amendment would do away with this cumbersome, unfair process and increase efficiency by requiring the government to automatically turn over a complete copy of all relevant files—with clear exceptions for national security or other privileged information—in each case. Placing an affirmative obligation on the government to provide this crucial information to

individuals who face removal will help ensure that immigrants have the information they need to fully and fairly litigate their cases and that immigration judges will be able to make informed, accurate decisions based on all the pertinent evidence.

For these reasons, we urge you to support Senator Coons' Amendment 5. Please do not hesitate to contact Holly Cooper at hscooper@ucdavis.edu or (530) 754-4833 with additional questions or concerns.

Sincerely,

Adhikaar
Advocates for Basic Legal Equality
America's Voice
American Civil Liberties Union
American Immigration Lawyers Association
Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center
Asian Pacific American Legal Center, a member of the Asian American Center for Advancing Justice
Casa de Esperanza
Center for Gender & Refugee Studies
Center for Legal Justice
Defending Dissent Foundation
Detention Watch Network
DRUM - Desis Rising Up & Moving
Families for Freedom
Forks Human Rights Group
Illinois Coalition for Immigrant and Refugee Rights
Immigration Equality Action Fund
Kitsap Immigrant Assistance Center
Latino Education & Training Institute
Lawrence Action Network for Diversity
Lutheran Immigration and Refugee Service
Maria Baldini-Potter & Associates, P.C.
Mark Noferi, Brooklyn Law School
Massachusetts Immigrant and Refugee Advocacy Coalition
National Center for Transgender Equality
National Council of La Raza (NCLR)
National Immigrant Justice Center
National Immigration Forum
New Orleans Workers' Center for Racial Justice
Northwest Immigrant Rights Project
Political Asylum Immigration Representation Project
University of Miami School of Law Immigration Clinic
Washington DREAM Act Coalition
Women's Refugee Commission