

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1096 (Luz Rivas)
Version: April 7, 2021
Hearing Date: June 15, 2021
Fiscal: No
Urgency: No

SUBJECT

Alien: change of terms

DIGEST

This bill makes nonsubstantive changes to the Codes by removing the term “alien” and replacing it with more appropriate terms, depending on the context.

EXECUTIVE SUMMARY

California’s Codes are currently replete with the word “alien,” used to describe a person who is not a citizen or a national of the United States. “Alien,” in the immigration context, has a long history of derogatory, racist, and dehumanizing usage, and was used with particular vitriol by members of the prior presidential administration. In recognition of the dehumanizing effect of referring to people as aliens, there is a growing movement to eliminate the term’s usage in favor of less offensive terminology; there is currently legislation pending before the United States Congress to remove “alien” from federal immigration laws. This straightforward bill removes the term “alien” from the California Codes and replaces it with other, more appropriate terms, depending on the context.

This bill is sponsored by the author and supported by the Anti-Defamation League, the California Faculty Association, the California Teachers Association, Consumer Attorneys of California, the Dolores Huerta Foundation, Lieutenant Governor Eleni Kounalakis, the National Association of Social Workers, California Chapter, and TechNet. The bill is opposed by America First Latinos, We The People Rising, and three individuals.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Uses the term “alien” throughout the Codes to describe a person who is not a citizen or national of the United States. (E.g., Bus. & Prof. Code, §§ 2064.3-2064.4; Civ. Code, § 671; Educ. Code, §§ 32400-32401; Gov. Code, §§ 241-242; Health & Saf. Code, §§ 1796.22 & 1796.32; Ins. Code, § 12693.76; Lab. Code, § 350; Mil. & Vet. Code, § 550; Pen. Code, §§ 112-114; Prob. Code, § 6411; Pub. Contract Code, § 6101; Pub. Resources Code, § 6403; Unemp. Ins. Code, § 1264; Veh. Code, § 12801.7; Welf. & Inst. Code, § 219.5.)

This bill:

- 1) States that it is the intent of the Legislature in enacting this measure to make only nonsubstantive changes that remove the dehumanizing term “alien” from all California code sections, and that nothing in this measure shall be interpreted to make any substantive change to existing law, including, but not limited to, eligibility for federal programs or benefits that are available to a person who meets the definition of “alien” under state or federal law.
- 2) Replaces the term “alien” in the Codes, where used to refer to a person who is not a citizen or national of the United States, and replaces it with appropriate substitutions, including definitions where necessary.
- 3) Makes additional technical and nonsubstantive changes.

COMMENTS

1. Author’s comment

According to the author:

Using the outdated term “alien” to describe a person is dehumanizing. Although it is not an explicit racial slur, it has become a code word for bigotry against immigrant communities. Using terms like “alien” shapes people’s opinions and are directly linked to harmful actions.

AB 1096 gives California the opportunity to change the narrative around immigration by removing the term “alien” from California law and replacing it with more inclusive legal terms.

2. This bill removes the offensive term “alien” from the Codes and replaces it with neutral terminology to describe persons who are not citizens or nationals of the United States

In the Anglo-American legal tradition, use of the term “alien” dates back at least as far as Blackstone’s Commentaries on the Laws of England.¹ Whether the term was used neutrally – i.e., without conveying disdainful or dehumanizing undertones – at the time is unclear. What is clear, however, is that the use of “alien” to describe people in the United States is inextricable from its racist history (and present).

The term “alien” conveys inhuman otherness – by definition, an alien could be from a different country or from a different planet.² Today, when used to describe people, the term is generally used as a derogatory or othering way to describe immigrants; the belittling effect is compounded when the term is used with “illegal,” for a dehumanizing (and often legally incorrect) way to describe undocumented immigrants.³ Recently, use of the term has been used as a racist tool to dehumanize immigrants from Mexico, Central, and South America, notably by former President Donald R. Trump in attacks on immigrants from those regions.⁴ The term has also, however, been used to distance and “other” U.S. citizens whom racist government officials deemed insufficiently “American” (i.e., white). For example, in World War Two, the forced relocation of persons of Japanese descent to concentration camps referred to “alien and non-alien” persons, not aliens and *citizens*; the word “alien” thus did the linguistic work of distancing native-born persons of Japanese ancestry from their status as U.S. citizens and instead presenting them as a security threat.⁵

Linguistic studies show that the connotations of “alien” are far more negative than its supposed synonyms. One study of the collocates – words that frequently appear in concert with a chosen word – found that the difference between the collocates of “alien” and “immigrant” was stark.⁶ The top ten collocates for each word are as follows:⁷

¹ See 1 Blackstone Commentaries 354-363.

² E.g., “Alien,” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/alien> [last visited Jun. 3, 2021].

³ Stribley, *The Way We Speak About Unauthorized Immigrants Matters*, HuffPost.com (Oct. 19, 2016; updated Sept. 6, 2017), https://www.huffpost.com/entry/the-language-of-illegal-immigration_b_58076b62e4b00483d3b5cdba [last visited Jun. 3, 2021].

⁴ E.g., Fritze, *Trump used words like ‘invasion’ and ‘killer’ to discuss immigrants at rallies 500 times: USA Today* (Aug. 8, 2019; updated Aug. 21, 2019), <https://www.usatoday.com/story/news/politics/elections/2019/08/08/trump-immigrants-rhetoric-criticized-el-paso-dayton-shootings/1936742001/> [last visited Jun. 3, 2021].

⁵ Saito, *Alien and Non-Alien Alike: Citizenship, Foreignness, and Racial Hierarchy in American Law*, 76 Or. Law. Rev. 261, 275 (1997).

⁶ Nuñez, *War of the Words: Aliens, Immigrants, Citizens, and the Language of Exclusion*, 2013 BYU L. Rev. 1517, 1531 (2014).

⁷ *Ibid.*

	<u>Alien</u>	<u>Immigrant</u>
1.	Invasive	Elders
2.	Planet	Families
3.	Abduction	Korean
4.	Enemy	Polish
5.	Abductions	Communities
6.	Invasion	Haitian
7.	Completely	Visas
8.	Spacecraft	Minority
9.	Totally	Refugee
10.	Creature	U.S.-Born

As the chart shows, the terms associated with “alien” are hostile or relating to non-humans, whereas the terms associated with “immigrant” are positive or legal. Even terms that might seem limited to the extraterrestrial context are, in fact, used to further dehumanize immigrants – such as the frequent use of the word “invasion” by former President Trump and others to describe immigration to the United States.⁸

This bill would eliminate the negative connotations of the word “alien” – however inadvertent – in our state’s laws by removing the term from the Codes and replacing it with neutral, legally correct terms. This is not a novel proposition. In California, this Legislature passed, and the governor signed, legislation to remove the term “alien” from the Labor Code⁹ and “illegal alien” from the Education Code.¹⁰ The Library of Congress stopped using the term “illegal alien” as a bibliographical term in 2016.¹¹ Many newspapers and other publications have revised their style guides to preclude the term “alien.”¹²

There is also a movement within the federal government to remove “alien” from statutes and executive documents. Federal legislators have introduced the U.S. Citizenship Act of 2021, which, among other things, would remove the term “alien”

⁸ Zimmer, *Where Does Trump’s ‘Invasion’ Rhetoric Come From?*, *The Atlantic* (Aug. 6, 2019), <https://www.theatlantic.com/entertainment/archive/2019/08/trump-immigrant-invasion-language-origins/595579/> [last visited Jun. 3, 2021].

⁹ SB 432 (Mendoza, Ch. 160, Stats. 2015).

¹⁰ AB 1850 (Eduardo Garcia, Ch. 69, Stats. 2016).

¹¹ Padilla & Rivera, *Library of Congress to stop using term ‘illegal alien’*, *Los Angeles Times* (Apr. 3, 2016), <https://www.latimes.com/nation/la-na-library-congress-alien-20160403-story.html> [last visited Jun. 3, 2021].

¹² E.g., Hiltner, *Illegal, Undocumented, Unauthorized: The Terms of Immigration Reporting*, *New York Times* (Mar. 10, 2017), <https://www.nytimes.com/2017/03/10/insider/illegal-undocumented-unauthorized-the-terms-of-immigration-reporting.html> [last visited Jun. 3, 2021]; NPR Style Guide, *Undocumented immigrant, illegal immigrant*, NPR.org (last updated Apr. 20, 2021), <https://training.npr.org/styleguide/> [last visited Jun. 3, 2021] (“Do not refer to people or groups as illegal immigrants or aliens”); Edgar, *The Times’ style: ‘Illegal immigrant’ or ‘undocumented immigrant,’ not ‘illegal alien’*, *Los Angeles Times* (Sept. 3, 2011), <https://www.latimes.com/opinion/la-xpm-2011-sep-03-la-le-postcript-20110903-story.html> [last visited Jun. 3, 2021].

from federal immigration laws and replace it with “noncitizen” and ensure that no executive branch uses the term in its signage or literature.¹³ And since President Joseph R. Biden took office, the top officials at Customs and Border Patrol, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services have already issued guidance memos directing their agencies to stop using “alien” when referring to immigrants in the United States.¹⁴

There is no opposition to the bill, and the Committee is unaware of any argument for maintaining the word “alien” in the Codes in light of its fraught connotations.

3. The bill’s statement of intent should ensure that removing the term “alien” does not have unintended, substantive consequences

Unless and until Congress passes legislation removing “alien” from federal statutes, the term will remain in federal law.¹⁵ On review, it appears that AB 1096 is carefully drafted to replace “alien” with terms that will not give rise to confusion or conflict with the use of “alien” in federal law, including by cross-referencing federal law where appropriate. Out of an abundance of caution, however, the author has included a statement of intent for the bill making clear that the Legislature’s intent is to make nonsubstantive changes and not affect eligibility for state and federal programs by people who currently fall under the definition of “alien” under state and federal law. Although this Committee has not received any information suggesting that legal challenges to the replacement language set forth in this bill are likely, this statement of intent should provide courts with a clear explanation of the Legislature’s intent, bolstering the likelihood that a court would correctly interpret the bill’s language to make nonsubstantive substitutions only.

4. Arguments in support

According to bill supporter California Teachers Association (CTA):

CTA believes immigrants and their contributions have a positive effect on our communities. Immigrants’ ideas, customs, languages, traditions, and values enrich our culture and the foundational fabric of society. Use of the word “alien” dehumanizes undocumented immigrants. The current political climate has shown an increase in hate crimes targeting immigrants, and we should do everything we can to put a stop to this inhumane, unconscionable, and cruel behavior. Political leaders may fan those tensions rather than diffuse them, as

¹³ S. 348 (Menendez, 2021); H.R. 1177 (Sanchez, 2021). Colorado’s legislature is also considering legislation to eliminate the term “illegal alien” from the one statute where it appears. (See Colo. HB 21-1075 (Lontine,2021).)

¹⁴ Sacchetti, *ICE, CBP to stop using ‘illegal alien’ and ‘assimilation’ under new Biden administration order*, Washington Post (Apr. 19, 2021), https://www.washingtonpost.com/immigration/illegal-alien-assimilation/2021/04/19/9a2f878e-9ebc-11eb-b7a8-014b14aeb9e4_story.html [last visited Jun. 3, 2021].

¹⁵ *E.g.*, 8 U.S.C. § 1101(a)(3) (“The term ‘alien’ means any person not a citizen or national of the United States”).

part of an agenda to divert attention from their own lack of governance. Changing the language we use in state law can help change attitudes, curb discrimination, and treat people more humanely.

CTA believes and recognizes all children, regardless of immigration status, are entitled to a free and appropriate quality public education. An environment free from harassment for these children should be assured.

4. Arguments in opposition

According to bill opponent We The People Rising:

AB 1096 is legislation that deals with specific language and seeks to muddy the clarity of the existing government term, alien. The word is defined as meaning noncitizen. It is a short and concise word used by the government because it is a precise and clear definition. This legislation would remove the word and replace it with an undefined list of terms.

In reality, this legislation appears to be political grandstanding...

It is a monumental waste of legislative energy and time as well as the taxpayers' money to proceed with this legislation.

SUPPORT

Anti-Defamation League
California Faculty Association
California Teachers Association
Consumer Attorneys of California
Dolores Huerta Foundation
Lieutenant Governor Eleni Kounalakis
National Association of Social Workers, California Chapter
TechNet

OPPOSITION

America First Latinos
Three individuals
We The People Rising

RELATED LEGISLATION

Pending Legislation:

SJR 2 (Hueso, 2021) urges the United States Congress to, among other things, pass President Biden's proposed legislation to replace "alien" with "noncitizen" in federal immigration laws. SJR 2 is pending before the Assembly Judiciary Committee.

Prior Legislation:

AB 1850 (Eduardo Garcia, Ch. 69, Stats. 2016) replaced the term "alien" with other terms in certain portions of the Education Code.

AJR 38 (Eduardo Garcia, Ch. 188, 2016) urged the United States Congress to pass, and President Barack H. Obama to sign, legislation that would prohibit federal executive agencies from using the word "aliens" to describe persons who are not citizens or nationals of the United States.

SB 432 (Mendoza, Ch. 160, Stats. 2015) eliminated references to "alien" in the Labor Code.

PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
