

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee
From: The Honorable John F. Gossart, Jr., Retired United States Immigration Judge
Date: January 31, 2022
Re: Written Testimony in Support of Senate Bill 265

I am submitting this written testimony to offer my unequivocal support for Senate Bill 265. I served as a United States Immigration Judge at the Baltimore Immigration Court for thirty-one years. I retired in 2013. At my retirement, I was the third most senior immigration judge in the United States. I was also an adjunct professor of immigration law at the University of Baltimore School of Law (20 years), and the University of Maryland School of Law (3 years). I am a proud Army Vietnam veteran.

Under current Maryland law, an adjudication through the Probation Before Judgment process, Crim. Pro. Section 6-220, is not considered a conviction. Unfortunately, however, the Maryland PBJ process *is* a “conviction” under federal immigration law. A person who avails herself/himself of the PBJ process has been convicted, with all attendant immigration consequences including deportation, ICE custody, and disqualification from defenses to deportation. This is because, to obtain a PBJ in Maryland, the defendant either pleads guilty or is found guilty, and then the court imposes probation. Even though the formal entering of judgment is stayed, the guilty plea and imposition of probation is sufficient to constitute a conviction under Title 8 United States Code 1101(a)(48)(A).

The immigration law defines “conviction” at 8 USC 1101(a)(48)(A) as follows:

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where--

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(emphasis added)

The proposed short addition to the Maryland PBJ statute would change the process such that a PBJ obtained through it would not be considered a conviction under federal immigration law. By allowing a judge to “find facts justifying a finding of guilt” before imposing probation and entering a PBJ, such a procedure would not be a conviction for Maryland criminal purposes *or* immigration purposes. That is, the result would be as intended by the Maryland legislature and the parties in negotiating for and imposing a PBJ: not a conviction in Maryland and NOT a conviction under federal immigration law.

The definition of a conviction under federal immigration law is not likely to change in response to this addition to the Maryland PBJ statute. It would take an act of Congress to alter the definition in the statute. As we know, immigration reform is unlikely to be feasible now or in the foreseeable future. The last major change to the federal immigration laws occurred in 1996, over 20 years ago. Since then, the statutes and regulations have remained virtually the same. Further, Virginia and New York have their own PBJ statutes; dispositions from these states do not constitute a conviction under federal immigration. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust.

To the contrary, my experience as an immigration judge has been that when an immigrant received the benefit of a Maryland PBJ, the facts of the case and/or the personal qualities of the immigrant, were consistent with the lenient nature of the disposition imposed. These were individuals who had made a mistake, often a minor one, and this mistake was aberrant, an accident of youth, inexperience, or a reaction to some kind of trauma or temporary problem that was often resolved by the time the individual found themselves in deportation proceedings. During my time as an immigration judge, I was often statutorily obligated to order the deportation of an immigrant

because of a Maryland PBJ, even though the immigrant was otherwise eligible to stay in the United States.

As an adjunct professor of law, I began each class by writing on the board,

“Do Justice.... Read the Law.”

I can share with you many gut wrenching and deeply sad stories where families have been torn apart permanently as a result of deportation based on federal immigration law notwithstanding a Maryland PBJ resolution. These decisions were correct as required by the law; however, they were not just.

Therefore, I unequivocally support SB 265 and this amendment to the Maryland PBJ statute.