



## SUPPORT SB 265

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Good Afternoon Chairman and Committee Members,

My name is Jacob Lichtenbaum, and I am a Staff Attorney at CASA de Maryland. CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 90,000 members in Maryland alone.

On behalf of our members, CASA urges a favorable report for Senate Bill 265.

We stand in support of this bill because our members are routinely harmed by Probation Before Judgement (“PBJ”) dispositions as the Maryland PBJ statute is currently structured.

Under Maryland state law, a court may stay the entering of a judgment, defer further proceedings, and place a defendant on probation when a defendant pleads guilty, *nolo contendere*, or is found guilty. Md. Code. Ann., Crim. Proc § 6-220(b)(1). Once the defendant’s probationary requirements have been completed, the court “shall discharge the defendant from probation.” *Id.* at (g)(1). This is a final disposition and a defendant is then discharged without “judgement of a conviction.” *Id.* at (g)(2) and (3).

PBJ avoids saddling a criminal defendant with a guilty disposition, which can incur a host of negative downstream consequences including limited employment opportunities, lack of access to education, and other significant burdens. The criminal defense community appreciates PBJ because it helps clients avoid guilty convictions if probation and other requirements are completed. Md. Code. Ann., Crim. Proc § 6-220.

When a defendant chooses to plead guilty, *nolo contendere*, or is found guilty, a court may impose probation on the defendant subject to reasonable conditions. *Id.* at (b)(1). Upon completing that probation, that defendant would not have a guilty conviction on their record. *Id.* at (g)(3). However, the federal immigration system views PBJ differently, deeming it a guilty disposition for purposes of federal immigration law. According to the Immigration

and Nationality Act, a conviction is “a formal judgment of guilt of the [noncitizen] entered by a court or, if adjudication of guilt has been withheld, where – (i) a judge or jury has found the [noncitizen] guilty or the [noncitizen] has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt.” INA § 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A). A Maryland PBJ thus constitutes a conviction under federal immigration law and can lead to devastating immigration consequences like detention, deportation, and loss of status.

There are various ways Maryland PBJ directly affects our work providing immigration services at a non-profit that works with low-income immigrants. The fact that Maryland PBJ is a conviction for federal immigration purposes affects CASA’s Deferred Action for Childhood Arrivals (“DACA”) clients, clients applying for citizenship, and CASA’s undocumented clients.

I want to describe briefly DACA’s requirements in order to show how important this amendment is to DACA recipients. To qualify for DACA, a person must demonstrate that they: (a) were under age 31 on June 15, 2012; (b) entered the US before turning 16; (c) have been in the US continuously since June 15, 2012 and while applying for DACA; (d) had no lawful status on June 15, 2012; (e) are currently in school, completed high school, have obtained a GED, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the US; and (f) “[h]ave not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.” See DACA Frequently Asked Questions available at <https://www.uscis.gov/archive/frequently-asked-questions>.

Clearly, the final section outlining disqualifying convictions is where DACA recipients are directly impacted by a PBJ. I have some examples I would like to share.

In 2018, Ryan was charged with First Degree Assault, which was subsequently amended to Second Degree Assault. The Second Degree Assault charge was *nolle prosequi* and Ryan pled to Disorderly Conduct, for which he received Probation Before Judgement. By giving Ryan Probation Before Judgement, the judge was likely sparing Ryan—only nineteen at the time—from receiving a criminal conviction upon the completion of his probation. However, in the eyes of the immigration system, Ryan has been convicted of Disorderly Conduct. Ryan will have to live with this guilty disposition—which could strip him of his DACA status—for the rest of his life.

Maricruz is another DACA recipient negatively affected by the current structure of Maryland PBJ. She is a divorced mother and the sole provider for three young US citizen children. She owns her own business and attends Baltimore University, where she is studying philosophy, law and ethics. Once she finishes her degree, she hopes to attend law school. Maricruz is a pillar of her community who volunteers with CASA, the Latino Racial Justice Circle, and the Latino Providers Network in Baltimore City. Maricruz’s only interaction with the criminal legal system was in 2014, when she was charged with Driving Without a License. She received Probation Before Judgement for that charge and hasn’t a criminal contact since. According to federal immigration law, however, she has been found guilty of a crime because of the way MD PBJ is currently structured.

Ryan, who is now only twenty-two, and Maricruz, who is supporting her family and trying to make a difference in her community, could be at grave risk if they lose their DACA status. The Biden administration has taken steps to protect DACA-mented individuals, but it has shown no immediate intention to change the INA's definition of "conviction." Therefore, the risk of adverse immigration consequences for immigrants with a Maryland PBJ disposition is ever-present. For immigrants like Ryan and Maricruz, these dispositions can lead to loss of status, detention, and deportation, contrary to the state's and judge's likely intent. Even though Ryan and Maricruz received PBJ, and were not convicted of an offense under state law, due to the current structure of the PBJ statute, federal immigration officials view them as having a conviction.

Probation Before Judgment is a vital tool of the criminal legal system that offers people the chance to have "clean" records and avoid the collateral consequences often associated with criminal convictions. The minor, but significant, changes to the statute presented in Senate Bill 265 will allow noncitizens to benefit in the same way that citizens do from this law. DACA recipients like Ryan and Maricruz, along with many other immigrants, are already facing a myriad of hurdles in the US. There should be no additional reason for them to live in the shadows.

CASA stands in favor of Senate Bill 265 and urges a favorable report.

