

January 31, 2022

Maryland General Assembly

Senate

Miller Senate Office Building
11 Bladen St.
Annapolis, Maryland

House of Delegates

House Office Building
6 Bladen St.
Annapolis, Maryland

Re: In Support of “Probation, Not Deportation,” House Bill 559 and Senate Bill 265

Dear Honorable Members of the General Assembly,

We, the undersigned, urge you to support HB 559/SB 265, a bill that will amend the Probation Before Judgment procedure so that all Maryland residents, regardless of immigration status, have the same access to the benefit of probation before judgment (“PBJ”).

There is a long history—especially for Black and brown people—of being over-policed, prosecuted, and then deported for even minor criminal contacts.¹ The criminal justice system has acted, for years, as a direct funnel to the immigration system.² Black and brown immigrants are more likely to have encounters with law enforcement, and then end up charged and prosecuted for crimes which lead to deportation.³ In short, Black and brown immigrants are more likely to be deported because of the prevalence of racial profiling and discriminatory policing in the United States. While in custody, Black immigrants often face worse treatment by immigration authorities and can be more likely to lose their legal cases for immigration relief.⁴ In 2020, Black immigrants reported that ICE officers had tortured them into signing their own deportation orders and then deported them to countries where they were likely to be persecuted.⁵ Hopes that conditions for Black immigrants

¹ Drew DeSilver, Michael Lipka, and Dalia Fahmy, *10 Things We Know About Race and Policing in the U.S.*, PEW RESEARCH CENTER (June 3, 2020), <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>.

² Tanvi Misra, *The Rise of ‘Crimmigration’: Law Professor César García Hernández Talks About How America Built a Legal System that Targets Immigrants For Profit – and How to Take it Down*, BLOOMBERG CITYLAB (Sep. 16, 2016, 2:01 PM), <https://www.bloomberg.com/news/articles/2016-09-16/c-sar-garc-a-hern-ndez-on-the-rise-of-crimmigration>.

³ See Gabriela Q. Kahrl, *Commentary: Racism in Immigration Asylum Decisions*, BALTIMORE SUN (Oct. 14, 2020, 11:53 AM), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1015-racist-immigration-policies-20201014-bi3dufphnzfjzlsdimchnzz2jy-story.html>.

⁴ *Id.*

⁵ Julian Borger, *US ICE Officers ‘Used Torture to Make Africans Sign Own Deportation Orders’*, GUARDIAN (Oct. 22, 2020, 6:00 AM), <https://www.theguardian.com/us-news/2020/oct/22/us-ice-officers-allegedly-used-torture-to-make-africans-sign-own-deportation-orders>. One man recounted that ICE officers “pepper-sprayed me in the eyes and [one officer] strangled me almost to the point of death. I kept telling him, ‘I can’t breathe.’ I almost died. As a result of the physical violence, they were able to forcibly obtain my fingerprint on the document.” Letter from Freedom for Immigrants et. al. to CRCL Officer Nation et. al. (Oct. 7, 2020), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5f7f17f39e044f47175204fb/1602164723244/Re+CRCL+Complaint+ICE%27s+Use+of+Torture+to+Coerce+Immigrants+to+Sign+Immigration+Documents+at+Adams+County+Correctional+Facility.pdf>.

would improve under the Biden administration quickly faded as horrifying images of border agents harassing Haitian migrants at the United States-Mexico border flooded the media last fall.⁶ These and other examples of institutional racism pervade our immigration system under the administrations of Democrats and Republicans alike.⁷

HB 559/SB 265 will prevent these sorts of injustices, including the needless, cruel detention and deportation of Black and brown people over minor criminal contacts. The prevalence of COVID-19 cases in immigrant detention centers increases the urgency of reducing the number of detained people, which this bill would also accomplish.⁸

The Maryland General Assembly long recognized that there are situations where “the best interest of the person and welfare of the state” dictate an outcome in a criminal matter that is not a conviction,⁹ for example when the individual is a **first-time offender, the crime is non-violent, and/or the conviction would generate consequences that are disproportionate to the situation that gave rise to the charges**. The General Assembly codified a disposition that is not a conviction under Maryland law—“probation before judgment”—whereby a court has the authority to strike the conviction and impose probation before judgment instead.¹⁰ For U.S. citizens, the PBJ has the desired outcome of allowing people to take responsibility for their mistakes and move on with their lives, without enduring lifelong, adverse consequences. The same is not true for non-citizen Maryland residents.

If a non-citizen Maryland resident obtains a PBJ, they can face loss of liberty, deportation, and permanent banishment from the United States. Because the noncitizen admits guilt under the existing PBJ procedure and the judge makes a finding of guilt, even though it is later stricken, the disposition is considered a conviction under federal immigration law, notwithstanding the intent of the Maryland General Assembly.¹¹

This bill proposes an equitable and simple solution: amend the PBJ statute so that it includes a process for entering a PBJ that would not trigger adverse immigration consequences. It provides another method for a judge to grant the same disposition, a PBJ¹²; the defendant would neither admit nor deny guilt and would not dispute the proposed facts of the case, and the judge would make a finding of facts sufficient to warrant guilt, and then impose probation.

⁶ Eileen Sullivan and Zolan Kanno-Youngs, *Images of Border Patrol's Treatment of Haitian Migrants Prompt Outrage*, N.Y. TIMES (Sept. 21, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

⁷ Borger, *supra* note 5. See also *UndocuBlack Reflects On U.S. Anti-Immigrant Brutality, Past And Present*, UNDOCUBLACK NETWORK (Oct. 5, 2021), <https://undocublack.org/press-releases/2021/10/5/undocublack-reflects-on-us-anti-immigrant-brutality-past-and-present>.

⁸ See *Highly-contagious omicron could spread quickly through crowded ICE facilities*, NPR (Jan. 2, 2021), <https://www.npr.org/2022/01/02/1069739357/highly-contagious-omicron-could-spread-quickly-through-crowded-ice-facilities>. Detainees have reported “begging for soap, for face masks, for the most basic of protections, only to be met with really brutal force and sometimes tear gas, solitary confinement and retaliation for speaking out about these conditions.” *Id.* Furthermore, “many detainees are reporting that they're having difficulty getting basic protections against COVID-19, including . . . the COVID-19 booster shot.” *Id.* See also Hector Alejandro Arzate, *People Detained at ICE Facility Allege COVID-19 Outbreak is Being Mishandled*, DCist (Jan. 13, 2022, 2:38 PM), <https://dcist.com/story/22/01/13/caroline-detention-facility-accused-mishandling-covid/>.

⁹ Md. Code Ann., Crim. Proc. § 6-220(b)(1)(i).

¹⁰ Md. Code Ann., Crim. Proc. § 6-220(b).

¹¹ *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013).

¹² Virginia (Virginia Code § 18.2-251) and New York (NY. Crim Pro. § 170.55) have similar statutes.

A PBJ by these means would not be considered a conviction under Maryland law *or* federal immigration law. Because the defendant waives his right to future trial prior to the entry of the PBJ, the judge can immediately proceed to judgment and sentencing if the defendant is later found to be in violation of probation.

We urge the legislature to pass HB 559/SB 265. Adding this language to the Maryland Probation Before Judgment statute would protect, without cost to anyone else, some of our most vulnerable Maryland residents from persistent institutional racism in both the criminal justice and immigration systems.

In gratitude,

The Honorable John F. Gossart, Jr., Retired
Immigration Judge



The Honorable Lisa Dornell, Retired
Immigration Judge

ACLU of Maryland

Marilyn J. Mosby
Baltimore City State's Attorney



Annapolis Immigration Justice Network

Eleanor Tierney
Aldерwoman, Ward 1
Annapolis City Council



Catholic Charities of the Archdiocese of
Washington

The Human Trafficking Prevention Project

Maryland Against ICE Detention

Amanda L. Indorf
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Luminus Network for New Americans

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ROUND TABLE
of Former Immigration Judges

**The Round Table of Former Immigration
Judges¹³**



MSBA Immigration Section Council



Jews United for Justice



Justice for Victims of Crime Clinic
University of Maryland School of Law



**University of Maryland School of Law,
Chacón Center for Immigrant Justice**



**National Immigration Project of the
National Lawyers Guild (NIPNLG)**



Just Peace Circles, Inc.



CASA



Hutchison Immigration, LLC



¹³ The Round Table of Former Immigration Judges is a group composed of former Immigration Judges and Appellate Immigration Judges of the Board of Immigration Appeals who united to file amicus briefs and engage in other advocacy work.



Howard County Coalition for Immigrant Justice



REYNOLDS IMMIGRATION PLLC



Maryland Criminal Defense Attorneys' Association (MCDA)



Takoma Park Mobilization



University of Maryland School of Law, Gender Violence Clinic



Muslim Voices Coalition



Sanctuary DMV



Maryland Office of the Public Defender



Law Office of J. Lance Conklin



Tohidi Law Office



Murray Osorio PLLC



Garfinkel Immigration Law, LLC



Heritage Community Church



Progressive Maryland



Maryland Legislative Coalition



Jezic & Moyse, LLC



Beverly Clarke Legal



Congregation Action Network



PG ChangeMakers



Law Office of Eldridge, Nachtman, &
Crandell, LLC



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