

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee
From: The Honorable Lisa Dornell, Retired 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 24 years. I retired in 2019. Prior to my time on the bench, I was a Senior Litigation Counsel with the Justice Department's Office of Immigration Litigation, where I argued many cases before federal circuit courts including the Fourth Circuit Court of Appeals.

Right now, immigrants who receive the benefit of probation for the same crime will face radically different outcomes, depending on if the probation is imposed by the State of Maryland or Commonwealth of Virginia. If the probation is imposed in Virginia pursuant to VA Code Ann. § 18.2-251, the immigrant's probation will not be treated as a conviction under federal immigration law. In *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011), the Fourth Circuit considered a Virginia adjudication under *Virginia Code § 18.2-251*, and the court said:

After such a plea, "if the facts found by the court would justify a finding of guilt," the court may, "without entering a judgment of guilt," instead "defer further proceedings and place" the offender on probation. *Id.* In his case, Crespo pled *not* guilty to the offense and the judge **found facts justifying a finding of guilt** and deferred adjudication over the Commonwealth's objection. Crespo was sentenced to one year of probation, which he served without incident.

Because Mr. Crespo had not pled guilty or admitted facts related to the simple possession of marijuana charge, but instead the court had *found facts justifying a finding of guilt*, the imposition of probation was not considered a conviction under federal immigration law and he was not deported.

But had Mr. Crespo's case occurred in Maryland, and had he received the benefit of probation before judgment, this Maryland equivalent to Virginia's probation statute would have rendered him deportable. This is because to receive the benefit of probation before judgment in Maryland, the judge would have had to follow the procedure as it is currently laid out in Md. Crim. Proc. § 6-220 which requires an admission of guilt and a formal finding of guilt by the judge before the benefit of probation may be extended. Although the Maryland legislature did not intend for a PBJ to be a conviction, it is just that for federal immigration purposes. Consequently, an immigrant with probation for the same crime will face radically different outcomes if the probation was imposed in Virginia versus Maryland. We refer to this unforeseen and arbitrary intersection between state and federal law as being a "jurisdictional happenstance." It is highly unfair and as a sitting Immigration Judge, it was very painful to render findings of deportability against individuals with a Maryland PBJ, knowing full well that, but for the fact that they agreed to a PBJ on the wrong side of the Potomac, they were sealing their fate under the federal immigration law, something that was not the desired or anticipated result of, and in fact, contrary to the purpose of the granting of the PBJ.

Not only is the current regime *prima facie* unjust, it also creates unequal and inconsistent law within the Fourth Circuit, which presides over both Maryland and Virginia. My experience in litigating before the Federal Circuit Courts of Appeals and my experience as an Immigration Judge cement my view that conflicting rulings from the Circuit Court, in addition to being unfair, cast an unnecessary shadow of confusion and uncertainty, something that in this instance can easily be remedied by Senate Bill 265.

This Bill presents an opportunity for the State of Maryland to ensure that the Federal Immigration Statute does not subvert the true intention of the Maryland State statute, which

is to truly give all who rely on the Maryland law the benefit of a probation *before* judgment, a benefit that tempers justice with mercy. The State of Maryland need not and ought not wait for a federal bureaucracy, with its mind-boggling array of priorities, to address this important matter over which the State has control.