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Thank you and good afternoon. My name is Himedes V. Chicas. I am the lead attorney and head of the Immigration Department at the Law Offices of Jezic & Moyse, LLC in Wheaton, Maryland. For nearly ten years now, I have represented hundreds of noncitizen clients in various immigration matters, including those fighting removal proceedings before the Executive Office for Immigration Review (EOIR), as well as those seeking affirmative immigration benefits before the Department of Homeland Security (DHS). I have also advised many noncitizen clients and their criminal defense attorneys regarding the immigration consequences of their pending criminal charges. Many of my clients have presented before me, with either a plea offer to, or, a final disposition of, Probation before Judgment (PBJ) pursuant to section 6-220 of the Maryland Criminal Procedure Code. I am pleased to discuss my experiences with clients who have been directly and negatively impacted by the current PBJ statute, and publicly support HB 0213.

As you already know, although not considered a conviction under Maryland law, a PBJ disposition is a conviction under immigration law because of the presence of the first critical element of a "conviction" under the immigration statute, in that the defendant either plead guilty, plead *nolo contendere*, or is found guilty by the court. *See* 8 U.S.C. 1101(a)(48)(A); *see also, Yanez-Popp v. INS*, 998 F.2d 231 (4th Cir. 1993). HB 0845, which proposes a change to the existing Maryland law allowing a judge to "find facts justifying a finding if guilt," and further clarifies that a judge has authority to "suspend a portion of all of the sentence," represents the alignment of the intended objective of the Maryland PBJ statute with the federal definition of a "conviction." *See, e.g., Crespo v. Holder*, 631 F.3d 130, 134 (4th Cir. 2011); *Jacquez v. Sessions*, 859 F.3d 258, 261-63 (4th Cir. 2017); *Boggala v. Sessions*, 866 F.3d 563, 568 (4th Cir. 2017). Such parity ensures that a Maryland PBJ disposition does not result in the inadvertent immigration consequence of either disqualifying a noncitizen from affirmative benefits such as asylum, permanent residence, or naturalization, or, even worse, subject him or her to being ordered removed and permanently banished from the United States. In this respect, I wish to share three experiences of some of my clients who have unexpectedly found themselves in dire circumstances as a result of a PBJ disposition.

Inadmissibility and Mandatory Detention as an "Arriving Alien"

"Ricardo" had been a lawful permanent resident since 1999. In 2008, Ricardo was charged with possession of less than 30 grams of marijuana—two blunts weighing less than two grams to be exact. He was offered and accepted a PBJ

disposition before the District Court of Maryland because his criminal defense attorney advised him that the PBJ was not considered a conviction. Ricardo has no other criminal charges or convictions. Ricardo renewed his green in 2010 without a problem. In 2011 Ricardo decided to take a one-week trip to visit family in his native Jamaica. Upon his return from Jamaica, Ricardo was stopped by Customs and Border Protection (CBP) at the airport and placed into deferred inspection. He was eventually detained by CBP and placed into removal proceedings, where DHS charged him as being inadmissible due to the 2008 PBJ disposition of the possession of marijuana offense. Although this offense was not grounds for denial of his green card or grounds for deportability, it is grounds for inadmissibility. *See* 8 U.S.C. 1182(a)(2)(A)(i)(II). To make matters worse, because of his inadmissibility, Ricardo was deemed to be an "arriving alien" under immigration law. Ricardo's designation as an arriving alien meant that he was subject to mandatory detention during the pendency of his removal proceedings, which lasted well over four months.

Deportability and Mandatory Detention because of a Generally Suspended Sentence pursuant to a PBJ

"Haile" is a permanent resident, originally from Ethiopia. He came to the U.S. on a diversity visa in 2008. In 2010, he and his girlfriend got into a verbal argument in their vehicle while it was parked. During this argument, Haile grabbed his girlfriend's arm as she exited the vehicle. She called the police and Haile was arrested and charged with second-degree assault. Although the couple reconciled, the state proceeded with the criminal charges. In order to avoid the stress of a trial, for him and his girlfriend, Haile accepted a plea offer where he would complete anger management classes, supervised probation for one year, and in exchange receive a PBJ disposition. The state agreed that Haile should not serve any time in jail, much less that he should be deported as a result of the offense. It was Haile's and his criminal defense attorney's understanding that because the offense was a state misdemeanor and not a conviction under Maryland law, and because he was not ordered to serve any time in jail, he would not face any immigration consequences. That same year, in 2011, while reporting to probation Haile was detained by DHS officials. The law at the time authorized DHS to charge his offense as an "aggravated felony" because it was deemed to be a "crime of violence" where a sentence of more than one year had been imposed. *See* 8 U.S.C. 1101(a)(43)(F). A noncitizen who is found to be deportable on aggravated felony grounds by the Immigration Court, is subject to mandatory detention and removal without any eligibility for discretionary relief from removal. Here, because Maryland's second-degree assault statute carries a maximum sentence of 10 years, the DHS argued, and the Immigration Court agreed, that the PBJ entered by the state court constituted a generally suspended sentence of ten years. As a result, the Immigration Court ordered Haile deported. Even though the conduct underlying the offense was arguably innocuous, and the

victim herself wanted to prevent Haile from being deported, she was powerless to prevent the entry of the removal order against Haile.

Eligibility for Naturalization

"Veronica" is a lawful permanent resident since the age of seven. Now at thirty years old, in June 2017, she files for naturalization *pro se*. Although Veronica has a clean criminal record, she has been charged with three separate minor traffic infractions for driving with expired registration, not wearing a seatbelt, and speeding, all of which took place between 2012 and 2016. Veronica's last speeding ticket for exceeding the maximum speed was in Cumberland, Maryland in August 2016. Veronica went to state court in October 2016 and accepted a PBJ disposition to the speeding violation, with unsupervised probation with an end date of October 20, 2017. Veronica attended her naturalization interview in September 2017. She passed her civics, reading and writing test. However, her naturalization application was subsequently denied, in part, because she had a "conviction" within the five-year statutory period preceding her naturalization application. As relevant, for purposes of naturalization eligibility, DHS has the discretion to deny a naturalization application to anyone who, *inter alia*, was "convicted" of any "unlawful act," on the grounds that he or she is unable to establish the requisite "good mora character' during the required statutory period. *See* 8 U.S.C. 1101(f); 8 CFR 316.10(b). An "unlawful act" includes any act that is against the law, such as speeding. Veronica sough my legal advice following the denial of her naturalization application. Due to the circumstances of her case, I determined that the filing of an appeal would be futile, cumbersome, and expensive. Instead, we opted to wait and re-file again from scratch. This meant that Veronica would be forced to pay additional legal fees, filing fees to the government, and be re-examined all because of a PBJ disposition for a single speeding ticket.

Conclusion

I could articulate and detail many other examples from my clients, or clients of other colleagues who have experienced similar dire situations. Many times, I find myself advising Maryland criminal defense attorneys that their client is likely better off taking a case to trial rather than accepting a PBJ offer. If HB 0213 is adopted and passed into law, however, I believe that the draconian immigration consequences on noncitizens will diminish and I, along with many other immigration attorney colleagues, will be able to argue that our clients remain eligible for immigration benefits or are not subject to removal from the U.S. at all. If this occurs, I will also be able to confidently advise my criminal defense attorney colleagues that a PBJ disposition is an "immigrant friendly" plea. Thank you for your time and attention.