



## SUPPORT HB 0213

**January 27, 2020**

Good Afternoon Chairman and Committee Members,

My name is Nicholas Katz, and I am the Senior Manager of Legal Services at CASA. 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 House Bill 0213.

We stand in support of this bill because our members are routinely negatively impacted by receiving a Probation Before Judgement (“PBJ”) disposition as it is currently structured.

Under Maryland State law, a court may stay the entering of a judgment, defer further proceeding, and place a defendant on probation when a defendant has plead guilty, *nolo contendere*, or is found guilty by a judge or jury. 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).

Probation Before Judgment is used to successfully avoid 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 looks favorably upon PBJ because of the simple fact that it helps clients avoid a guilty conviction 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 onto 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.*

However, the Federal immigration system does not view the results of PBJ in the same manner that is mentioned above. Because PBJ is associated with guilt by manner of a plea, or a judge or

jury conviction, it is therefore seen as a conviction under criminal law. MD. Code. Ann., Crim. Proc § 6-220(b)(1). Thus, PBJ is deemed a guilty disposition for the purposes of federal immigration law. 1 INA § 101(a)(48)(A), 8 USC § 1101(a)(48)(A). Regarding an alien in the United States a conviction is “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...” *Id.*

There are various ways a Probation Before Judgment directly affects our work providing immigration services at a non-profit that works with low income immigrants. The issues of PBJ being a guilty disposition for immigration purposes affect CASA’s Deferred Action for Childhood Arrivals (“DACA”) clients, clients applying for citizenship, and those clients that are undocumented.

I want to describe briefly what the requirements for the DACA application are, in order to demonstrate how important this amendment is, especially to DACA recipients. To qualify for DACA, a person must demonstrate that they: (a) Were under age 31 in 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) They 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) “Have 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 was sentenced to Probation Before Judgment. Besides this Disorderly Conduct conviction, Ryan has never been convicted of any criminal offense. By giving Ryan Probation Before Judgment, the judge was likely sparing the 21 year old 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, a record of which expungement bears no weight in immigration law. Ryan will have to live with this guilty disposition, which could cause him harm concerning his immigration status, for the rest of his life.

Another DACA recipient negatively affected by the current structure of PBJ is Maricruz. She is a divorced mother of three young children and is the sole provider for them. She owns her own business, while attending Baltimore University, studying philosophy, law and ethics. Once she finishes her degree, she hopes to attend law school. Maricruz is a pillar of her community, volunteering with CASA, the Latino Racial Justice Circle and the Latino Providers Network in Baltimore City. Maricruz’s only interaction with law enforcement was in 2014, when she was charged with Driving Without a License. She received Probation Before Judgment for this charge and has never had a negative encounter with the police since that time. In the eyes of

immigration, however, she has been found guilty of a crime because of the way the law is currently structured.

Ryan, who is only 22 years old, 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 – which is a real risk, given that the Supreme Court of the United States is expected to rule on the future of the program in coming months. The current federal administration has shown its intention to target vulnerable populations, and anyone who they can paint as a “criminal” is at special risk. 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 justice system, which offers individuals the opportunity to have “clean” records and avoid the collateral consequences often associated with criminal convictions. The minor, but significant, changes to the system embodied in House Bill 0213 will enable members of the immigrant community to benefit in the same way that others 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 no additional reasons for them to hide in the shadows.

CASA stands in favor of House Bill 0213 and urges a favorable report.

