

Testimony for HB 403 ---- Opposed

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Introduction

I am here in opposition to HB 403, and I oppose it on many levels. The concept of sanctuary cities, and in this case a sanctuary state law is fundamentally flawed because of their almost mutinous refusal to follow federal law. And because of laws like this bill proposes, you and your family are in real danger.

The premis is that HB 1461 protects illegal aliens from crime and that it fosters good relations between them and law enforcement; thus here we see the Trust Act morphed into the Safe Act morphed into this bill. The problem is that the sanctuary is for the illegal and not for the American citizen

Simply put, sanctuary jurisdictions are safe havens for criminal aliens, not their innocent victims.

However, the state of Maryland, has no power to grant immunity to anyone who does not cooperate with the federal government concerning any aspect of someone's immigration status; in essence, frustrating the federal government to enforce the law. The Supremency Clause of the Constitution grants congress and the United States government exclusive powers of certain matters, one of which is immigration.

A bill like HB403 creates a conflict preemption where the federal law says X, the state law says don't follow X, instead follow Y. It makes the enforcement of federal law so extremely difficult to render it uselss and frustrates the federal government in its exclusive ability to perform its job.

Imagine, if you will, that Maryland passed this bill and then shielded its state and local officials under an umbrella of immunity whereby the state officials could refuse to share any information with federal investigators. The state official could say that they have the information the government wants, as part of a government investigation might well include communication with the state, and that state official could say they will not share any information because they have immunity...in essence they are shielded and not ever held liable under this law.

This would result in state wide obstruction of justice.

Immigration law is under that authority of the federal government and any state law which frustrates or conflicts with the government to enforce its laws is unconstitutional.

HB 403 would never pass constitutional muster because it completely frustrates the exclusive and sole power of the federal government to enforce immigration law. This is not a power reserved to the states, not a shared power between the federal government and the states, but rather, an exclusive and explicit power of the federal government only.

Sanctuary laws are designed for a state to illegally create its own immigration law, something the sponsor of this bill Del. Gutierrez stated when expressing her opposition to the Arizona 1070 Supreme Court case when she said "*I enthusiastically applaud the federal government's important decision to challenge Arizona's flawed anti-immigrant law, SB1070, and DOJ's declaration that "...SB 1070 unconstitutionally interferes with the federal government's authority to set and enforce immigration policy," said Ana Sol Gutierrez, Maryland State Delegate.*

So when states tred in this area, they must tred lightly.

When you start granting immunity to all these state officials, whether you think it is good policy or not is irrelvent, as you are promoting something that is unconstitutional and endorsing obstruction of justice.

Criminal Procedure - Civil Immigration Enforcement – Restrictions Opposed

I am opposed to HB 388 simply because Section 287 of the Immigration and Nationality Act provides ICE officers the authority to arrest aliens without a judicial warrant.

No judge has the authority to issue a warrant for a civil immigration violation. Congress, by statute, vested this authorization solely to supervisory immigration officers.

HB 388, and in previous sessions, the Trust Act, the Safe Act and others are merely an avenue for sanctuary jurisdictions to cover their lack of interest in utilizing the full power of the U.S. government against criminal aliens.

There is no form to file to obtain such a warrant; again, no procedure of which I am aware to seek one; and no body of law for judges to rely on in the issuance of said document.

In addition, immigration judicial warrants don't actually exist, and the sponsors of this bill already know this. Sanctuary policies, which is essentially what this bill proposes use the theory of requiring judicial warrants as a smoke screen to disguise the assertion that sanctuary jurisdictions might well comply with ICE detainers if they are accompanied by a judicial warrant

I live in Montgomery County, one of the worst sanctuary jurisdictions in the nation. Our County Executive stated the following in his unconstitutional declaration that, "Immigration detainers, not accompanied by judicial warrants, are civil detainers for which the federal government bears sole responsibility."

I have no idea what exactly "sole responsibility" consists of as immigration detainers are civil detainers....because immigration proceedings are civil, as opposed to criminal in nature.

Immigration detention is, however, detention, and the authority for such detention has been recognized as valid since the 19th century. (*Wong Wing v. United States*, 163 U.S. 228 (1896))

<https://supreme.justia.com/cases/federal/us/163/228/>

(The United States can forbid aliens from coming within their borders, and expel them from their territory, and can devolve the power and duty of identifying and arresting such persons upon executive or subordinate officials.)

Yet, the MoCo Executive states:

"No agent or department may arrest or detain a person based on an Administrative Warrant, an Immigration Detainer, or any other directive by DHS, on a belief that the person is not present legally in the United States or has committed a civil immigration violation.

As set forth below, detainers are not issued "on a belief that the person is not present legally in the United States or has committed a civil immigration violation", but rather upon probable cause of those facts. And in particular if the alien has been ordered deported or committed a crime.

Detainers are governed by 8 C.F.R. §287.7(a), which states:

Detainers in general. Detainers are issued pursuant to sections 236 and 287 of the [Immigration and Nationality] Act [INA] and this chapter 1. Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency.

A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

Also pertinent is 8 C.F.R. §287.7(d):

Temporary detention at Department request. Upon a determination by the Department [of Homeland Security (DHS)] to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

Warrant, an Immigration Detainer, or any other directive by DHS, on a belief that the person is not present

legally in the United States or has committed a civil immigration violation.

As set forth below, detainers are not issued "on a belief that the person is not present legally in the United States or has committed a civil immigration violation", but rather upon probable cause of those facts.

Section 287 of the INA is more circumscribed and intended for the specific benefit of other federal agencies, states, and localities. In fact, section 236 of the INA specifically references a warrant issued by the AG, now the Secretary of Homeland Security. The regulations specifically stipulate who may issue such a detainer:

- (1) *Border patrol agents, including aircraft pilots;*
- (2) *Special agents;*
- (3) *Deportation officers;*
- (4) *Immigration inspectors;*
- (5) *Adjudications officers;*
- (6) *Immigration enforcement agents;*
- (7) *Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and*
- (8) *Immigration officers who need the authority to issue detainers under section 287(d)(3) of the [INA] in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the USCIS.*

Detainers are — and have been for generations — a standard protocol for asking cooperation from law enforcement agencies when seeking to take custody of aliens. What's more, the filing of detainers, colloquially known as "holds", is a standard practice throughout U.S. law enforcement at every level.

Virtually all agencies seek such assistance from one another, knowing that if the system of cooperation breaks down, then all public safety is compromised.

Exactly what kind of "court order" are ICE agents to seek when asking authority to detain an alien? There is no provision in the INA — no provision whatsoever — for judicial orders.

Nor do they exist in any other federal statute. What the INA does specifically provide for is arrest of aliens, with or without warrant, for violations of the immigration laws — but the warrants authorized by Congress are not judicial warrants, and deliberately so.

Again, there is no regulatory provision for a federal judge to issue a detainer, let alone a warrant.

Neither of those provisions provides for, or more importantly requires, a "judicial warrant".

In reality, reference to "judicial warrants" is simply a fig leaf relied upon by sanctuary jurisdictions to cover their lack of interest in utilizing the full power of the U.S. government against criminal aliens.

There is no form to file to obtain such a warrant; again, no procedure of which I am aware to seek one; and no body of law for judges to rely on in the issuance of said document.

All of that is just a thought. The fact is, though, that judicial warrants for the detention of aliens do not now exist, have never existed in the immigration context, and likely never will.

Thus, it is time to open our eyes and admit that the emperor really doesn't have any clothes. This bill is nothing more than a shtick to assert that sanctuary jurisdictions would comply with detainer requests that are accompanied by "judicial warrants". In essence, lawmakers would like to adhere to federal law, but we just can't. I would advise this committee to pay no attention to the man behind the curtain as we all know, that in the context of immigration, there is no such a thing as "judicial warrants".

DISTRICT COURT OF MARYLAND

Case Information

[Go Back Now](#)

Court System: **DISTRICT COURT FOR MONTGOMERY COUNTY (ROCKVILLE) - TRAFFIC SYSTEM**
Citation Number: **00000036JOB8S** Case Status: **CLOSED CASE**
Violation Date: **12/08/2017** Violation Time: **09:56 PM**
Violation County: **MONTGOMERY COUNTY (ROCKVILLE)**
District Code: **06** Location Code: **01**
AgencyName: **BARRACK B (FREDERICK)**
Officer ID: **5461**

Defendant Information

Defendant Name: **GARZA PALACIOS, ROBERTO ANTONI**
Address: **420 BELLE GROVE RD**
City: **GAITHERSBURG** State: **MD** Zip Code: **20877**
Race: **UNKNOWN, OTHER**
Sex: **M**
DOB: **09/1989**

Charge Information

Charge: Article: **TA** Sec: **21** Sub-Sec: **901.1** Para: **B** Code:
Description: **NEGLIGENT DRIVING VEHICLE IN CARELESS AND IMPRUDENT MANNER ENDANGERING PROPERTY, LIFE AND PERSON**
Location Stopped: **S/B I270 N/O FALLS RD**
Contributed to Accident?: **YES** Personal Injury?: **FATAL**
Fine: **280**
Vehicle Tag: **5CT6573** State: **MD** Vehicle Description: **00HOND02**

Disposition Information

Plea: **GUILTY**
Disposition: **GUILTY**
Disposition Date: **06/25/2018**
Contributed To Accident: **YES** Personal Injury?: **FATAL**
Sentence Date: **06/25/2018**
Sentence Time: Yrs: **00** Mos: **00** Days: **000**
Suspended Time: Yrs: **00** Mos: **00** Days: **000**
Costs: Fine: **280** CourtCost: **0** CICF: **0**
Suspended: Fine: **0** CourtCost: **0** CICF Cost: **0**

Related Person Information

Name: **HUMAYUN, ASIM ESQ.**
Connection: **DEFENSE ATTORNEY**
Address: **200-A MONROE STREET #215**

City: **ROCKVILLE** State: **MD** Zip Code: **20850**

Event History Information

Event	Date	Comment
RTRL	2018-04-18	REQUEST FOR TRIAL RECEIVED
SCHG	2018-04-27	T241;R TO A
ESCH	2018-04-30	20180712;0130P;01
SCHG	2018-06-25	D226;A TO C

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.

Case Information

Court System: **District Court For Carroll County - Traffic System**
Location: **Carroll**
Citation Number: **1D80MFJ**
Case Title: **State of Maryland vs. ROBERTO ANTONIO GARZA PALACIOS**
Case Type: **Citation - Traffic**
Filing Date: **09/30/2019**
Violation Date: **09/29/2019** Violation Time: **03:32:00 AM**
Violation County: **Carroll County**
Agency Name:
Officer ID: Officer Name:
Case Status: **Open**

Other Reference Numbers

Same Incident : **1D90MFJ**
Same Incident : **1DB0MFJ**
Same Incident : **1DC0MFJ**
Same Incident : **SD73101**

Defendant Information**Defendant**

Name: **GARZA PALACIOS, ROBERTO ANTONIO**
Address: **21020 Goshen Rd.**
City: **GAITHERSBURG** State: **MD** Zip Code: **20882**
Race: **Unavailable** Sex: **Male** Height: **5'5"** Weight: **150**
DOB: **09/1989**

Attorney(s) for the Defendant

Name: **HUMAYUN, ASIM AMJAD**
Address Line 1: **200A Monroe Street**
Address Line 2: **Suite 215**
City: **ROCKVILLE** State: **MD** Zip Code: **20850**

Involved Parties Information**Plaintiff**

Name: **State of Maryland**
Attorney(s) for the Plaintiff
Name: **State's Attorney, Carroll County**
Address Line 1: **55 N. Court Street**
City: **Westminster** State: **MD** Zip Code: **21157**

Officer - Arresting/Complainant

Name: **LOUDIN, C**
AgencyName: **MSP-BARRACK G (WESTMINSTER)**
Address: **1100 BALTIMORE BLVD.**
City: **WESTMINSTER** State: **MD** Zip Code: **21157**

Court Scheduling Information

Event Type	Event Date	Event Time	Court Location	Court Room	Result
Trial - Officer Scheduling	12/20/2019	08:45:00	Carroll District Court	Courtroom 2	Postponed/Reset
Trial - Officer Scheduling	02/12/2020	13:15:00	Carroll District Court	Courtroom 2	

Charge and Disposition Information

Charge No: **1** Statute Code: **TA.21.901.1.B**
Charge Description: **NEGLIGENT DRIVING VEHICLE IN CARELESS AND IMPRUDENT MANNER ENDANGERING PROPERTY, LIFE AND PERSON**
Speed Limit: **0** Recorded Speed: **0** Location Stopped: **MD 144 S/O GRIFITH RD**
Probable Cause Indicator: **No** Contributed to Accident: **No** Personal Injury: **No**
Property Damage: **No**
Mandatory Court Appearance: **No** Fine Amount Owed: **\$140.00**
Vehicle Tag: **2DG2925** State: **MD** Vehicle Description: **02FORD05 SILVER EXPLORER**
Disposition
Convicted Speed: **0** Contributed to Accident: **No** Personal Injury:
Plea: Plea Date:
Disposition: Disposition Date:

Document Information

File Date: **10/16/2019**
Filed By:
Document Name: **Attorney Appearance Filed**
Comment: **Line of Appearance**

File Date: **10/16/2019**
Filed By:
Document Name: **Motion to Suppress / Exclude Evidence, Dismiss and Severance**
Comment: **Motion to Suppress**

File Date: **10/16/2019**
Filed By:
Document Name: **Motion / Request / Demand for Discovery and Inspection**
Comment: **Request for Discovery and Inspection**

File Date: **10/16/2019**
Filed By:
Document Name: **Demand / Request - Chemist / Breath Technician**
Comment: **Demand for Intoximeter Operator, Chemist, any expert and Witness(es) to chain of Custody of Evidence**

File Date: **10/16/2019**
Filed By:
Document Name: **Motion/Request for Language Interpreter**
Comment: **Request for Spoken Language Interpreter**

File Date: **10/16/2019**
Filed By:
Document Name: **Address Change**
Comment: **Line to Change Address of Defendant**

File Date: **12/17/2019**
Filed By:
Document Name: **Motion / Request - To Continue / Postpone**
Comment: **Unopposed Urgent Motion to Continue**

File Date: **12/17/2019**
Filed By:
Document Name: **Supporting Document**
Comment: **File Copy of Exhibit A on Unopposed Urgent Motion to Continue**

File Date: **12/17/2019**
Filed By:
Document Name: **Supporting Document**
Comment: **File Copy of Exhibit B on Unopposed Urgent Motion to Continue**

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Agency Name:
Officer ID: Officer Name:
Case Status: **Open**

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<https://www.washingtontimes.com/news/2020/feb/10/william-barr-looks-criminal-charges-sanctuary-citi/>

Justice Department launches legal assault to roll back sanctuary cities

William Barr says he'll look at criminal charges for 'shielding of aliens

Attorney General William Barr waves after speaking at the National Sheriffs' Association Winter Legislative and Technology Conference in Washington, Monday, Feb. 10, 2020. (AP Photo/Susan Walsh) [more >](#)

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By [Stephen Dinan](#) - *The Washington Times* - Monday, February 10, 2020

The [Justice Department](#) unleashed a legal assault on sanctuary jurisdictions across the country Monday, filing a new round of civil lawsuits asking judges to overturn the policies, and warning state and city officials they could soon face their own criminal charges for harboring illegal immigrants.

Lawsuits were filed against California, New Jersey and King County, in Washington, each of which has adopted novel ways of interfering with U.S. Immigration and Customs Enforcement's ability to arrest, detain and deport illegal immigrants.

Attorney General William P. Barr also said his department is taking a look at state and local prosecutors who pursue lesser charges against illegal immigrants in order to keep their rap sheets cleaner, keeping them off ICE's radar.

And Mr. [Barr](#) said he's ordered a review to see whether the [Justice Department](#) can use a criminal law "that prohibits the harboring or shielding of aliens in the United States" against jurisdictions that have sanctuary policies.

"Today is a significant escalation in the federal government's efforts to confront the resistance of sanctuary cities," Mr. [Barr](#) said in remarks to the National Sheriff's Association, where he unveiled the legal barrage. "We will consider taking action against any jurisdiction that, or any politician who, unlawfully obstructs the federal enforcement of immigration law

The Trump administration has been in a running battle with sanctuary cities, whose number has grown exponentially as anti-Trump state and local governments seek new ways to thwart the president's get-tough immigration policies.

Former Attorney General Jeff Sessions had tried to cut off some grant funding for sanctuary cities, but courts across the country rejected that policy as illegal.

Mr. Sessions also raised the possibility of using the criminal alien harboring laws against sanctuaries, though he never followed through.

Mr. [Barr](#) on Monday signaled the administration's patience has run out as the sanctuary movement has shown no signs of letting up. Indeed, states and cities seem to be competing with each other to find new ways to refuse to work with ICE.

One of those is King County Executive Dow Constantine's 2019 ban on ICE detainee flights taking off or landing at Boeing Field, the Seattle region's major airport.

Federal prosecutors said the flight ban has disrupted deportation operations throughout the Northwest.

"King Country's action was improper, it was illegal," said Brian I. Moran, the U.S. attorney for the Western District of Washington.

In New Jersey, the Justice Department's lawsuit challenges a state attorney general directive that requires local law enforcement to tell immigrants when they are being released — but bans them from telling the same information to ICE in many cases.

U.S. Attorney Craig Carpenito said the case "seeks to restore the balance of power between the federal and state governments" by reasserting the supremacy of federal law.

Mr. Barr also highlighted a lawsuit brought against California late last month challenging state law AB32, which outlaws private prisons.

That has severely dented ICE, which heavily relies on those facilities to hold migrant detainees in the state.

Under the ban, ICE says it must now ship detainees out of state, then pay to shuttle them back and forth for their court dates. The ban also hurts the migrants themselves, because they are held far from family, ICE says.

"California has every right to decide how it wants to manage its own prisoners and detainees, but it has no authority to dictate to the federal government how it conducts federal operations," Mr. Barr said.

New Jersey Attorney General Gurbir Grewal blasted the new lawsuit against him as election-year politics, pointing out he issued the directive in 2018, and suggested it was odd that it was only now being challenged.

"What's disappointing is that my former colleagues at the Justice Dept have agreed to go along with this election year stunt," he said on Twitter.

In King County, Mr. Constantine accused Mr. Trump and Mr. Barr of "bullying" him, and defended his attempt to use local rules to shape federal policy.

"Mass deportations raise deeply troubling human rights concerns, including separation of families, racial disproportionality in policing, and constitutional issues of due process," he said.

He said the local airports voluntarily refused to serve ICE flights, and said they are working with federal aviation officials on working out issues over the policy. He said Mr. Barr's lawsuit circumvents those discussions "for the sake of grabbing headlines."

The Justice Department moves come a week after Homeland Security announced punishment for New York, where a new law grants driver's licenses to illegal immigrants, while banning ICE and Customs and Border Protection from access to the state's motor vehicle records.

In response, CBP announced New Yorkers are no longer able to sign up for some trusted traveler programs that speed people through customs at airports and border crossings.

New York on Monday fired back, with Attorney General Letitia James filing a lawsuit claiming her state is being singled out.

She pointed to other states that have similar laws granting licenses to illegal immigrants.

Homeland Security counters that what sets New York apart is the ban on accessing records. Those records are the only place to find information on DUIs and other serious traffic offenses, which are part of the checks required to sign up for trusted traveler programs.

No checks, no signups, Homeland Security says.

Ms. James, in the new lawsuit, says they do share criminal information with the FBI, so Homeland Security should be able to get records from the bureau.

New York's four U.S. attorneys weighed in Monday with a statement backing up Homeland Security and criticizing the state.

U.S. attorneys in other states with sanctuary battles, from Oregon to North Carolina to Maine, also

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 AgencyName: **MSP-BARRACK G (WESTMINSTER)**
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Trial - Officer Scheduling	12/20/2019	08:45:00	Carroll District Court	Courtroom 2	Postponed/Reset
Trial - Officer Scheduling	02/12/2020	13:15:00	Carroll District Court	Courtroom 2	

Charge and Disposition Information

Charge No: **1** Statute Code: **TA.20.103.B**
 Charge Description: **FAILURE TO RETURN TO & REMAIN AT SCENE OF ACCIDENT INVOLVING ATTENDED VEH.DAMAGE**
 Speed Limit: **0** Recorded Speed: **0** Location Stopped: **MD 144 S/O GRIFFITH RD**
 Probable Cause Indicator: **No** Contributed to Accident: **No** Personal Injury: **No**
 Property Damage: **No**
 Mandatory Court Appearance: **Yes** Fine Amount Owed: **\$0.00**
 Vehicle Tag: **2DG2925** State: **MD** Vehicle Description: **02FORD05 SILVER EXPLORER**
 Disposition
 Convicted Speed: **0** Contributed to Accident: **No** Personal Injury:
 Plea: Plea Date:
 Disposition: Disposition Date:

Document Information

File Date: **11/22/2019**
 Filed By:
 Document Name: **Miscellaneous Correspondence Filed**
 Comment: **SAO filed add'l charge cnt 5.**

File Date: **12/17/2019**
 Filed By:
 Document Name: **Motion / Request - To Continue / Postpone**
 Comment: **Unopposed Urgent Motion to Continue**

File Date: **12/17/2019**
 Filed By:
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 Comment: **File Copy of Exhibit A on Unopposed Urgent Motion to Continue**

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Trial - Officer Scheduling	02/12/2020	13:15:00	Carroll District Court	Courtroom 2	

Charge and Disposition Information

Charge No: **1** Statute Code: **TA.21.201.A1**
Charge Description: **DRIVER FAILURE TO OBEY PROPERLY PLACED TRAFFIC CONTROL DEVICE INSTRUCTIONS**
Speed Limit: **0** Recorded Speed: **0** Location Stopped: **MD 144 S/O GRIFITH RD**
Probable Cause Indicator: **No** Contributed to Accident: **No** Personal Injury: **No**
Property Damage: **No**
Mandatory Court Appearance: **No** Fine Amount Owed: **\$90.00**
Vehicle Tag: **2DG2925** State: **MD** Vehicle Description: **02FORD05 SILVER EXPLORER**
Disposition
Convicted Speed: **0** Contributed to Accident: **No** Personal Injury:
Plea: Plea Date:
Disposition: Disposition Date:

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City: **WESTMINSTER** State: **MD** Zip Code: **21157**

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Trial - Officer Scheduling	02/12/2020	13:15:00	Carroll District Court	Courtroom 2	

Charge and Disposition Information

Charge No: **1** Statute Code: **TA.21.301.A**
Charge Description: **FAILURE TO DRIVE VEHICLE ON RIGHT HALF OF ROADWAY WHEN REQUIRED**
Speed Limit: **0** Recorded Speed: **0** Location Stopped: **MD 144 S/O GRIFITH RD**
Probable Cause Indicator: **No** Contributed to Accident: **No** Personal Injury: **No**
Property Damage: **No**
Mandatory Court Appearance: **No** Fine Amount Owed: **\$90.00**
Vehicle Tag: **2DG2925** State: **MD** Vehicle Description: **02FORD05 SILVER EXPLORER**
Disposition
Convicted Speed: **0** Contributed to Accident: **No** Personal Injury:
Plea: Plea Date:
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