RESOURCES FOR THE FOREIGN BORN

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February 23, 2021

RE: In Support of Senate Bill 527

Dear Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee:

As a Maryland resident and attorney, I write on behalf of FIRN to express our wholehearted support for SB527. Since 1981, FIRN has been dedicated to providing services to immigrants including refugees, asylees, asylum seekers, and many who are noncitizens in Howard County and throughout Maryland. Our legal staff represent hundreds of Marylanders each year in every phase of their immigration story, and for those who might face contact with the criminal justice system, even minor offenses can lead to grave consequences.

Noncitizen Marylanders, regardless of their immigration status or the path they took to the United States, face an extraordinarily complex federal immigration system. When immigrants are charged with even minor criminal offenses, it can result in detention, deportation, ineligibility for citizenship, and possible banishment from the U.S. and permanent separation from their families. These consequences are often unexpected and not the intention of Maryland prosecutors or judges, but are the result of the way federal immigration law operates—an area of the law not well understood even by the best attorneys and which is subject to constant change.

Before he served as Associate Justice of the U.S. Supreme Court and Chief Prosecutor at the Nuremburg war crimes trials, Robert H. Jackson served as U.S. Attorney General. In 1940, then Attorney General Jackson delivered a speech to the Department of Justice on his vision for the ethic and conduct of prosecutors. To his attorneys, he said that a prosecutor's position is "of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just."[1] He continued that even when "the government technically loses its case, it has really won if justice has been done."[2] Justice Jackson's successors—good and bad—continue to oversee the federal immigration courts[3] and his words remain an example for Maryland prosecutors who, with the passage of SB527, would have additional latitude to do justice for Marylanders.

But justice is a rare thing in American immigration. It carries a long legacy of racism, border walls, kids in cages, and raids within our communities. It is a legacy of fear and violence

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1 Robert H. Jackson, *The Federal Prosecutor*, April 1, 1940, available at https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf.

2 *Id*.

3 Federal immigration courts are part of the Executive Officer for Immigration Review ("EOIR"), a federal agency within the U.S. Department of Justice overseen by the U.S. Attorney General.

against outsiders, and cuts harshly against the vision we teach our children about America; that we are a nation of immigrants and dreamers, a melting pot of cultures, open to anyone willing to work hard for their piece of the Dream. One need only tour an immigration detention facility or sit for a few minutes in an immigration court to see that reality is far different: a deportation machine without independent judges, without rules of evidence or procedure, and without basic notions of fairness or due process of law.

I concede many of these challenges require an overhaul of the immigration system at the federal level, but that does not mean that state and local officials are without power to change the system for the better. Currently, Maryland criminal procedure law allows a defendant to agree to Probation Before Judgment ("PBJ"). Where circumstances of the offense warrant it—such as first time, non-violent offenses—a PBJ allows Maryland courts to impose probation without a formal conviction under Maryland law. This statute has allowed U.S. citizens charged in Maryland to take responsibility for an offense without enduring the collateral consequences ordinarily imposed with a conviction. But for noncitizens, federal law does not interpret a Maryland PBJ as it was intended by the General Assembly; federal law still finds a PBJ in Maryland to be a conviction. This leads many noncitizens who agree to PBJ—many who reasonably believe they will not face these consequences and who would not if they were citizens—to be detained by immigration officials and placed into removal proceedings. And Maryland judges who only intended for the defendant in front of them to receive probation are actually sentencing many of them to be deported and exiled from the U.S. It is clearly a mechanism in need of reform.

As is often said, even a small change can make a big difference. And with that in mind, FIRN encourages the General Assembly to take the opportunity through SB527 to provide Maryland judges and state's attorneys with one more tool to do justice; to mitigate the disastrous consequences of America's unforgiving immigration system to better serve their community, regardless of a defendant's immigration status.

SB527 would make a simple amendment to the PBJ procedure by allowing Maryland judges to impose probation after staying its finding of guilt, thereby avoiding immigration consequences. Similar to procedures which already exist in other states such as Virginia[4] and New York[5], SB527 would create greater equity and bring the PBJ mechanism in line with the General Assembly's original intent that a PBJ should not be a conviction. The amendment would not change the outcome of the criminal case, nor would it provide noncitizens any advantage—it simply tries to keep noncitizens on equal footing in the criminal justice system.[6]

From my own prior experience working as an immigration attorney in New York, I have seen the effect of a similar process to the amendment offered in SB527. By adjudicating cases in contemplation of dismissal, New York's prosecutors and judges are able to do justice in their communities when—in cases they believe it warranted—they may agree to postpone and ultimately dismiss charges without a conviction so long as a defendant avoids future criminal activity and satisfies agreed-upon conditions. This process is not a way for anyone to avoid

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4 *See* Va. Code § 18.2-251.

5 *See* N.Y. Crim. Proc. L. § 170.55.

6 *See Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n. 5 (1953) (The Constitution "extends [its] inalienable privileges to all 'persons'" in the United States.).

responsibility for criminal activity, but is a means to keep the "particularly severe penalty"[7] of deportation or other collateral consequences from attaching to relatively minor or first-time offenses.

Therefore, given FIRN's experience providing legal services to the immigrant community in Maryland, my own comparative experience with a similar procedure in New York, and the significant equity which would be afforded by this small procedural change in the criminal procedure law, we can see no justification for refusing to pass this important legislation. We encourage the committee to forward SB527 for approval by the Senate. I welcome any additional questions you may have.

Respectfully submitted,

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[7] *See Padilla v. Kentucky*, 130 S. Ct. 1473, 1481 (2010).