

February 19, 2021

Maryland General Assembly

Senate

Miller Senate Office Building
11 Bladen St.
Annapolis, Maryland

House of Delegates

House Office Building
6 Bladen St.
Annapolis, Maryland

Re: In Support of House Bill 354 and Senate Bill 527

Dear Honorable Members of the General Assembly,

We, the undersigned, urge you to support HB 354/SB 527, a bill that will amend the Probation Before Judgment procedure so that all Maryland residents, regardless of immigration status, have the same access to the benefit of probation before judgment (“PBJ”).

While we expect that the Biden administration will treat immigrants with greater humanity than Trump did, we also know that prior administrations have not been fair to immigrants. There is a long history—especially for Black and brown people—being over-policed, –prosecuted, and then deported for even minor criminal contacts¹. The criminal justice system has acted, for years, as a direct funnel to the immigration system². Black and brown immigrants are more likely to have encounters with law enforcement, and then end up charged and prosecuted for crimes which lead to deportation.³ In short, Black and brown immigrants are more likely to be deported because of the prevalence of racial profiling and discriminatory policing in the United States. While in custody, black immigrants often face worse treatment by immigration authorities and can be more likely to lose their legal cases for immigration relief.⁴ Just last year, Black immigrants reported that ICE officers had tortured them into signing their own deportation orders and then deported them to countries where they were likely to

¹ Drew DeSilver, Michael Lipka, and Dalia Fahmy, *10 Things We Know About Race and Policing in the U.S.*, PEW RESEARCH CENTER, (June 3, 2020), <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>.

² Tanvi Misra, *The Rise of ‘Crimmigration’: Law Professor César García Hernández Talks About How America Built a Legal System that Targets Immigrants For Profit – and How to Take it Down*, BLOOMBERG CITYLAB, (Sep. 16, 2016, 2:01 PM), <https://www.bloomberg.com/news/articles/2016-09-16/c-sar-garc-a-hern-ndez-on-the-rise-of-crimmigration>.

³ See Gabriela Q. Kahrl, *Commentary: Racism in Immigration Asylum Decisions*, BALTIMORE SUN, (Oct. 14, 2020, 11:53 AM), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1015-racist-immigration-policies-20201014-bi3dufphnzfjzlsdimchnzz2jy-story.html>.

⁴ *Id.*

be persecuted.⁵ This and other examples of institutional racism pervade our immigration system and will not disappear with a new administration.⁶

HB 354/SB 527 will prevent just these sorts of injustices – the needless, cruel detention and deportation of Black and brown people over minor criminal contacts. The prevalence of COVID-19 cases in immigrant detention centers increases the urgency of reducing the number of detained people, which this bill would also accomplish.⁷

The Maryland General Assembly long recognized that there are situations where “the best interest of the person and welfare of the state” dictate an outcome in a criminal matter that is not a conviction,⁸ for example when the individual is a **first-time offender, the crime is non-violent, and/or the conviction would generate consequences that are disproportionate to the situation that gave rise to the charges**. The General Assembly codified a disposition that is not a conviction under Maryland law— “probation before judgment” –whereby a court has the authority to strike the conviction and impose probation before judgment instead.⁹ For U.S. citizens, the PBJ has the desired outcome of allowing people to take responsibility for their mistakes and move on with their lives, without enduring lifelong, adverse consequences. The same is not true for non-citizen Maryland residents.

If a non-citizen Maryland resident obtains a PBJ, they can face loss of liberty, deportation, and permanent banishment from the United States. Because the noncitizen admits guilt under the existing PBJ procedure and the judge makes a finding of guilt, even though it is later stricken, the disposition is considered a conviction under federal immigration law, notwithstanding the intent of the Maryland General Assembly.¹⁰

This bill proposes an equitable and simple solution: amend the PBJ statute so that it includes a process for entering a PBJ that would not trigger adverse immigration consequences. It provides another method for a judge to grant the same disposition, a PBJ¹¹; the defendant would neither admit nor deny guilt and would not dispute the proposed facts of the case,

⁵ Julian Borger, *US ICE Officers ‘Used Torture to Make Africans Sign Own Deportation Orders’*, GUARDIAN, (Oct. 22, 2020, 6:00 AM), <https://www.theguardian.com/us-news/2020/oct/22/us-ice-officers-allegedly-used-torture-to-make-africans-sign-own-deportation-orders>. One man recounted that ICE officers “pepper-sprayed me in the eyes and [one officer] strangled me almost to the point of death. I kept telling him, ‘I can’t breathe.’ I almost died. As a result of the physical violence, they were able to forcibly obtain my fingerprint on the document.” Letter from Freedom for Immigrants et. al. to CRCL Officer Nation et. al. (Oct. 7, 2020), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5f7f17f39e044f47175204fb/1602164723244/Re+CRCL+Complaint+ICE%27s+Use+of+Torture+to+Coerce+Immigrants+to+Sign+Immigration+Documents+at+Adams+County+Correctional+Facility.pdf>.

⁶ *Id.* (“The abuse we are witnessing, especially right now against black immigrants, isn’t new, but it is escalating.”).

⁷ See CENTER FOR MIGRATION STUDIES, IMMIGRANT DETENTION AND COVID-19: HOW A PANDEMIC EXPLOITED AND SPREAD THROUGH THE U.S. IMMIGRANT DETENTION SYSTEM, (Aug. 2020), <https://cmsny.org/wp-content/uploads/2020/08/CMS-Detention-COVID-Report-08-12-2020.pdf>. “A simulation by the Vera Institute for Justice – which accounted for new ‘book ins’ and transfers between facilities – estimated that 19 percent of all detainees over a 60-day period between mid-March and mid-May 2020 would have contracted COVID-19, a figure 15 times higher than the number of confirmed cases by ICE in mid-May (Kuo et al.). If ICE had tested earlier and more extensively, it would have ‘confirmed’ that many times more detainees had contracted COVID-19.” *Id.* at 4.

⁸ Md. Code Ann., Crim. Proc. § 6-220(b)(1)(i).

⁹ Md. Code Ann., Crim. Proc. § 6-220(b).

¹⁰ *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013).

¹¹ Virginia (Virginia Code § 18.2-251) and New York (NY. Crim Pro. § 170.55) have similar statutes.

and the judge would make a finding of facts sufficient to warrant guilt, and then impose probation. A PBJ by these means would not be considered a conviction under Maryland law *or* federal immigration law. Because the defendant waives his right to future trial prior to the entry of the PBJ, the judge can immediately proceed to judgment and sentencing if the defendant is later found to be in violation of probation.

We urge the legislature to pass HB 354/SB 527. Adding this language to the Maryland Probation Before Judgment statute would protect, without cost to anyone else, some of our most vulnerable Maryland residents from persistent institutional racism in both the criminal justice and immigration systems.

In gratitude,

**The Honorable John F. Gossart, Jr., Retired
Immigration Judge**



ACLU of Maryland

**The Honorable Lisa Dornell, Retired
Immigration Judge**



**The Honorable Deni L. Taveras,
Prince George's County Council, District 2**

**American Immigration Lawyers
Association- DC Chapter (DC/MD/VA)**

**Prof. E. Keyes, University of Baltimore
Immigration Rights Clinic**



**ROUND TABLE
of Former Immigration Judges**

**The Round Table of Former Immigration
Judges¹²**



UndocuBlack Network



MSBA Immigration Law Section Council



Annapolis Immigration Justice Network

¹² The Round Table of Former Immigration Judges is a group composed of former Immigration Judges and Appellate Immigration Judges of the Board of Immigration Appeals who united to file amicus briefs and engage in other advocacy work.



Jews United for Justice



Capital Area Immigrants' Rights Coalitions (CAIR)



Justice for Victims of Crime Clinic
University of Maryland School of Law



Maryland Criminal Defense Attorneys' Association (MCDAA)



University of Maryland School of Law,
Immigration Clinic



University of Maryland School of Law,
Gender Violence Clinic



National Immigration Project of the
National Lawyers Guild (NIPNLG)



Public Justice Center



CASA



Sanctuary DMV



SURJ Baltimore



Takoma Park Mobilization



Baltimore City Mayor's Office of
Immigrant Affairs