

IN SUPPORT OF HB 354

To: House Judiciary Committee
From: The Honorable John F. Gossart, Jr., Retired United States Immigration Judge
Date: February 19, 2021
Re: Written Testimony in Support of House Bill 354

I am submitting this written testimony to offer my unequivocal support for House Bill 354. I served as a United States Immigration Judge at the Baltimore Immigration Court for thirty-one years. I retired in 2013. At my retirement, I was the third most senior immigration judge in the United States. I was also an adjunct professor of immigration law at the University of Baltimore School of Law (20 years), and the University of Maryland School of Law (3 years). I am a proud Army Vietnam veteran.

Under current Maryland law, an adjudication through the Probation Before Judgement process, Crim. Pro. Section 6-220, is not considered a conviction. Unfortunately, however, the Maryland PBJ process *is* a “conviction” under federal immigration law. A person who avails herself/himself of the PBJ process has been convicted, with all attendant immigration consequences including deportation, ICE custody, and disqualification from defenses to deportation. This is because, to obtain a PBJ in Maryland, the defendant either pleads guilty or is found guilty, and then the court imposes probation. Even though the formal entering of judgment is stayed, the guilty plea and imposition of probation is sufficient to constitute a conviction under Title 8 United States Code 1101(a)(48)(A).

The immigration law defines “conviction” at 8 USC 1101(a)(48)(A) as follows:

- (48)(A) The term "conviction" means, with respect to an alien, 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, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(emphasis added)

The proposed short addition to the Maryland PBJ statute would change the process such that a PBJ obtained through it would not be considered a conviction under federal immigration law. By allowing a judge to “find facts justifying a finding of guilt” before imposing probation and entering a PBJ, such a procedure would not be a conviction for Maryland criminal purposes *or* immigration purposes. That is, the result would be as intended by the Maryland legislature and the parties in negotiating for and imposing a PBJ: not a conviction in Maryland and NOT a conviction under federal immigration law.

The definition of a conviction under federal immigration law is not likely to change in response to this addition to the Maryland PBJ statute. It would take an act of Congress to alter the definition in the statute. As we know, immigration reform is unlikely to be feasible now or in the foreseeable future. The last major change to the federal immigration laws occurred in 1996, over 20 years ago. Since then, the statutes and regulations have remained virtually the same. Further, Virginia and New York have their own PBJ statutes; dispositions from these states do not constitute a conviction under federal immigration. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust.

To the contrary, my experience as an immigration judge has been that when an immigrant received the benefit of a Maryland PBJ, the facts of the case and/or the personal qualities of the immigrant, were consistent with the lenient nature of the disposition imposed. These were individuals who had made a mistake, often a minor one, and this mistake was aberrant, an accident of youth, inexperience, or a reaction to some kind of trauma or temporary problem that was often resolved by the time the individual found themselves in deportation proceedings. During my time as an immigration judge, I was often statutorily obligated to order the deportation of an immigrant

because of a Maryland PBJ, even though the immigrant was otherwise eligible to stay in the United States.

As an adjunct professor of law, I began each class by writing on the board,

“Do Justice.... Read the Law.”

I can share with you many gut wrenching and deeply sad stories where families have been torn apart permanently as a result of deportation based on federal immigration law notwithstanding a Maryland PBJ resolution. These decisions were correct as required by the law; however, they were not just.

Therefore, I unequivocally support HB 354 and this amendment to the Maryland PBJ statute.

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baltimoresun.com/opinion/op-ed/bs-ed-op-0207-pbj-deportation-20210205-4td5rmdayraobpp4fejvdxfo4-story.html

By John F. Gossart Jr.



“May God forgive you, because I cannot.”

These words were written to me in a letter while I was a United States immigration judge at the Baltimore Immigration Court, where I presided for 31 years. The letter was written by the wife of a man I had ordered deported. In so doing, I had permanently separated a father and husband from his wife and children. These words will stay with me for the rest of my life.

Michelle Jones’ husband, Daryl, was charged with a minor offense in Maryland. Like many first-time offenders and individuals charged with minor violations, he was given probation before judgment (PBJ). This meant that Daryl, a lawful permanent resident of the United States was not convicted under Maryland state law. For United States citizens, a Maryland PBJ poses no further consequences unless they violate the terms of their probation. But for non-citizens like Daryl, the legal consequences can be far more dire.

Although a PBJ is not considered a conviction under state law, it is considered a conviction under federal law and therefore triggers immigration consequences, such as detention and deportation. I have witnessed countless non-citizens be ordered deported as a result of a PBJ and the devastation to their families that follows. I myself have ordered the deportation of hundreds of Maryland residents like Daryl because of a PBJ. It didn’t matter that these

individuals had been deemed worthy of a second chance and not convicted under Maryland law. Their PBJs condemned them to the gravest punishment — deportation under federal immigration law — leaving me with no judicial discretion. My hands were tied by the law.

The Maryland General Assembly has the opportunity, and the responsibility, to correct this unjust system by amending the PBJ statute. That is why I am asking the Maryland General Assembly to pass legislation (House Bill 354/Senate Bill 527) that would make probation before judgment accessible to all Maryland residents, regardless of citizenship status. The amendment would merely change the process by which a PBJ is entered; the impact of a PBJ would remain unchanged.

This bill ensures that the consequences of PBJs are the same for citizens and non-citizens alike, narrowing the disparities in our criminal justice and immigration systems, which disproportionately affect people of color. And for someone like Daryl, it would have been the difference between deportation and staying in the country to be with his family and watch his kids grow up.

Virginia and New York have similar statutes, which function so that their non-citizen residents do not suffer additional consequences from probation. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust. Which side of the Potomac River the case is heard on should not determine whether a PBJ triggers federal consequences.

While the arrival of a new administration in Washington brings hope of immigration reform, the federal immigration statute at issue here is very unlikely to be changed. Such an alteration would require an act of Congress, which is extremely improbable given that the last major change to the federal immigration laws occurred 25 years ago. It is up to the Maryland General Assembly to take action.

People like Daryl, who was deemed worthy of PBJ, should not be condemned to deportation under federal law. Daryl's wife, Michelle, told me in her letter that I had ruined her life and the lives of her children. She wrote that I was in a position of great power and authority and that I could have given him a second chance. I regret that I was not able to do so.

In addition to serving as a United States Immigration Judge, I was an adjunct professor of law for twenty years. I always told my students, "Do Justice." Amending the Maryland PBJ statute is the just thing to do.

John F. Gossart Jr. (judge800@yahoo.com) retired as a United States Immigration Judge.

Recommended on Baltimore Sun
