



Fair Courts for Immigrant New Yorkers

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As prospects for immigration reform at the federal level remain dire, it is essential that our state take action to protect the millions of immigrants who call New York home. For immigrants who face charges in the criminal legal system, the potential impact is severe and life-changing - it may include detention, deportation, and ineligibility for U.S. citizenship.

That's why we need fair courts for immigrant New Yorkers - where judges provide a clear and accurate notification that there could be immigration consequences before entering any plea and ensure that immigrants are alerted to get advice they are entitled to from their attorneys.

What immigrant New Yorkers experience today in criminal courts and how this bill addresses it:

NOTIFICATIONS THAT DO MORE HARM THAN GOOD. Without standardized language, judges often make statements that are incorrect or misleading. Not only can these statements conflict with correct advice immigrants receive from their attorneys, it can also undermine attorneys' responsibility to determine individual consequences because they mistakenly rely on the judge's notification. Determining immigration consequences is complex, requires confidential information from the client, and as legal advice is clearly outside the role of a judge. The bill ensures judges follow a standard notification that is accurate and allows for immigrants to meaningfully consult with counsel.

NO NOTICE FOR LOWER LEVEL OFFENSES. Immigrants have a right to receive a notification from judges in felony cases, but there is no requirement to notify immigrants who face misdemeanors and violations. Many people are surprised to learn that under unjust federal laws passed in the 1990's, even misdemeanors and violations often lead to detention, deportation, and permanent exclusion from the U.S. While the Office of Court Administration recommends notification in every case, it is critical that notification be required in every case. The bill extends notification to all cases.

NO REMEDY WHEN RIGHTS ARE VIOLATED. When judges either fail to provide a required notification or give an incorrect or misleading notification today, there is usually no way to seek reprieve for those who face detention, deportation or ineligibility for U.S. citizenship as a result. A right without a remedy is no right at all. The bill ensures that when a judge fails to provide proper notification to a non-citizen, the plea can be vacated, following the example of 15 other states that provide a remedy to help prevent unlawful deportation based on unfair and unknowing pleas.

The status quo creates distress, anxiety and confusion for so many immigrant New Yorkers facing high stakes. We must take the common-sense step to ensure accountability for immigrant New Yorkers and pass this bill!

TESTIMONIALS*

"In 1998, I was granted asylum in the United States after fleeing persecution in Uzbekistan. In New York I was charged with a felony. My lawyer told me I was offered a deal that would avoid jail time and urged me to accept it, but didn't tell me it would have any immigration impact. In court, the judge said the plea could affect my "ability to remain a resident." Since I was an asylee and not a resident, I didn't think this applied to me. I wish the judge had used the notification proposed in this bill so that I would have had notice to seek better advice from counsel. Several years later, I learned that the plea meant I was likely to be deported to Uzbekistan where I feared for my life." - **BILOL**

"I have lived in the United States as a lawful permanent resident since I was a young child. I got into trouble as an adult, and was being offered a plea which my attorney told me could result in my deportation, but did not explain it would make my deportation mandatory. In court, the judge said about my possible deportation "if you can fight it, good for you." I figured if the judge thought I could fight it, and since I had been here so long, that I had a chance. Later, I found out that my plea to the year in jail took away any possible defense. I wish the judge had used the notification proposed in the bill so that I wouldn't have had false hope. I am now living in fear of being deported to a country where I don't know anyone and don't remember my life there." - **OSCAR**

* Clients of Appellate Advocates.
Pseudonyms used