



## Wrongful Convictions Act:

### Strengthening Noncitizen Rights (S.266/A.98)

## The Problem

Everyone in this country has the right to defend themselves in court, regardless of their immigration status. But many obstacles stand in the way of immigrants exercising this right, including language barriers, financial barriers, pressures to plead guilty, and the lack of education and knowledge about criminal-immigration law among defense attorneys and noncitizens. People who are hit with criminal charges are immediately confronted with countless considerations and deprivations—pretrial detention, making bail, potential prison time, loss of a job, separation from loved ones, the list goes on. For noncitizens, the calculus is even more complex because taking a bad plea deal or having an unfair trial can land you in immigration court, immigration detention, and ultimately even in exile.

For immigrants, the stakes of a criminal case are so high that the right to legal advice on immigration consequences is guaranteed by the Constitution. But in the moment, many noncitizens are not informed about these consequences. Attorneys commonly misadvise clients that they won't be deported or have an application for benefits denied, and other attorneys may fail to mention immigration at all. It is not until ICE comes knocking at the door, often years or even decades after a person serves their sentence, that people stitch the story together and are confronted with the reality of being separate from their loved ones and deported.

# A Solution to Reverse Wrongful Convictions:

The Wrongful Convictions Act (S.266/A.98) provides an indispensable tool to vindicate the rights of noncitizens in this situation. This bill would provide more opportunities for people to clear their records of defective pleas and convictions entered without their full knowledge of the immigration consequences and disproportionate punishments, as is required by law.

## **Strengthens and expands the One Day to Protect New Yorkers Act.**

The One Day to Protect New Yorkers Act became law in April 2019 to protect New Yorkers from disproportionate collateral consequences like deportation and detention, by reducing criminal sentences by just one day. To ensure that these one-day reductions are honored by immigration, the Wrongful Convictions bill creates stronger post-judgment motions that outline the unfairness of the initial plea or conviction.

---

## **Guarantees that everyone gets the opportunity to have their 440 case reviewed on appeal.**

This ensures that judgments that may have legal or factual errors are reviewed. This right to appeal is very important for immigrants because the improper conviction is often the sole reason they are facing deportation or cannot become a green card holder or citizen.

---

## **Guarantees a right to counsel.**

440 motion practice for noncitizens is a specialized area of criminal-immigration law where many attorneys do not have deep experience. Unscrupulous attorneys can take advantage of immigrants who face life-and-death consequences, and other immigrants who cannot afford a lawyer never have the opportunity to bring their legitimate claims to court.

