

## Memorandum of Support

### Court Notifications Bill S.2903A (Kavanagh)

**April 2022**

Brooklyn Defender Services strongly urges the legislature to pass the Court Notifications Bill (S.2903A), which would require the court, during a guilty plea allocution, to accurately advise a defendant of the risk of deportation if he or she is not a citizen of the United States.

Brooklyn Defender Services (BDS) is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality.

We represent approximately 25,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

### **The Current Law**

Since 1995, New York Criminal Procedure Law section (CPL) 220.50(7) has required a court to notify a defendant who is pleading guilty that there may be immigration consequences of a guilty plea to a felony. This has helped ensure that people make informed pleas and promptly have an opportunity to discuss the issues with their counsel. Relatedly, the New York Court of Appeals has found that deportation is a collateral consequence “of such tremendous importance, grave impact and frequent occurrence”<sup>1</sup> that due process requires this judicial notification.

### **Background**

Immigrants have the right under the U.S. Constitution to receive immigration advice from defense counsel when facing criminal charges, due to the severe immigration

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<sup>1</sup> People v. Peque, 22 N.Y.3d 168, 176 (2013).

consequences that can follow including, mandatory detention and deportation. The United States Supreme Court in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) held that, pursuant to the Sixth Amendment of the U.S. Constitution, specific evaluation, consideration, and advice about immigration consequences are legally required to be provided by defense counsel. Often, counsel who meet their duty to provide immigration advice can resolve cases or negotiate pleas that minimize the likelihood of deportation and preserve future eligibility for status or citizenship.

CPL 220.50(7) and *People v. Peque*, 22 N.Y.3d 168, at 38 (2013), provide that a court must give a judicial warning on the record about the potential of facing immigration consequences. “[T]he trial court must provide a short, straightforward statement on the record notifying the individual that, in sum and substance, if the defendant is not a United States citizen, he or she may be deported upon a guilty plea.”<sup>2</sup>

However, because no standardized language exists, some judges provide notifications that do more harm than good, and directly conflict with defense counsel’s duty to provide individualized, accurate legal advice to their clients. Without standardized judicial notification language, a court may potentially negate advice that had been given by defense counsel. A court’s ad hoc notification may also amount to incorrect legal advice. Such advice would create confusion when a qualified immigration specialist has already provided clear and correct advice in coordination with defense counsel. Any overly broad and potentially incorrect statement by the court could invalidate a plea bargain rather than preserve it, particularly if the court initiated a dialogue with the defendant about the issue and especially if the statement made by the court is incorrect under the law. .

In addition, in some cases, judges only provide the judicial notification on the record when they believe someone is an immigrant, rather than providing the judicial notification to every defendant. When a court asks about immigration status on the record, the court may be unknowingly interfering with immigration remedies or defenses.

## **Proposed Resolution**

The **Court Notifications Bill (S.2903A)** enacts standardized court notification language that requires the court, prior to accepting a plea of guilty on any violation, misdemeanor, or felony case, to provide notice that such plea and the acceptance thereof could result in deportation, removal from the United States, exclusion from the United States or denial of citizenship, if the person is not a citizen of the United States.

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<sup>2</sup> See *People v. Peque*, 22 N.Y.3d 168, 197 (2013).



The notification will serve as an additional opportunity for the individual to become aware of the possibility of immigration consequences resulting from a plea. The standardization of the language will ensure that the judicial notification reinforces defense counsel's duty to provide individualized advice rather than potential contradicting information or legal advice that was given to an accused by their defense counsel.

To protect the people BDS represents and to ensure that every defendant receives the benefit of the statutory warnings, the proposed resolution requires that the court issue judicial warnings to everyone, regardless of confirmed or suspected citizenship status. The court may not engage in an individualized colloquy or analysis on the record about immigration status, consequences, or engage the person, the defense counsel or the District Attorney's office in any conversations on the record that could prompt a response about an individual's immigration status.

Brooklyn Defender Services supports this bill in its entirety/as currently drafted. The proposed bill is essential to the protections of immigrant defendants and to ensuring that defense counsel's *Padilla* advice is not undermined.

Brooklyn Defender Services has represented many immigrants who did not receive proper information about the immigration consequences of their criminal case during their legal process. As a result of this lack of information, immigrants may be detained and deported. With the passage of this bill, New York State will take an important step toward ensuring immigrants are able to exercise the protections available to them and to make informed decisions about the criminal proceedings against them. This bill will clarify existing legal protections and provide a remedy for those whose rights have been violated. For these reasons, we urge the legislature to pass and the Governor to sign S.2903A this session.

If you have further questions, please contact Nyasa Hickey at [NHickey@bds.org](mailto:NHickey@bds.org).