



Memorandum in Support

NYSBA #11

March 27, 2023

A.3057

By: M of A Cruz

S.5826

By: Senator Kavanagh

Assembly Committee: Third Reading

Senate Committee: Codes

Effective Date: 90th day after it shall have become law

AN ACT to amend the criminal procedure law, in relation to requiring the court, prior to accepting a plea, to advise the defendant of the risk of deportation if he or she is not a citizen.

THE NEW YORK STATE BAR ASSOCIATION **SUPPORTS THIS LEGISLATION**

The Court Notification Bill

The Court Notification Bill would enact standardized court notification language so judges would not provide legal advice to criminal court defendants, but instead reinforce defense counsel’s duty to provide individualized advice to their clients. The notification would also provide an additional opportunity for individuals to become aware of the possibility of immigration consequences resulting from a plea.

Because of the enmeshed nature of the immigration and criminal legal systems, deportation is a near-certain result of a broad range of criminal convictions.¹ The importance of reliable and accurate information for noncitizens accused of criminal offenses has never been more important, since “deportation is an integral part—indeed, sometimes the most important part — of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”² Attorneys who meet their duty to advise on immigration consequences can resolve cases or negotiate pleas that minimize the likelihood of deportation and preserve future eligibility for status or citizenship. But many New Yorkers do not receive accurate legal advice regarding the immigration consequences of a conviction in a criminal case, which can attach even if they are documented, including having lawful permanent residence (a “green card”).

New York recognizes that due process compels that a trial court apprise a noncitizen defendant of the penalty of deportation as a direct consequence of a guilty plea to a felony, given that failure to adequately apprise the defendant may affect the validity of the defendant's plea.³ Our courts recognize that “deportation is a plea consequence of such tremendous importance, grave

¹ *Padilla v. Kentucky*, 559 U.S. 356, 360-61 (2010).

² *Id.* at 559.

³ *People v. Peque*, 22 N.Y.3d 168, 176 (2013).

impact, and frequent occurrence that a defendant is entitled to notice that it may ensue from a plea.”⁴ Despite this mandate, trial court delivery of such notice is often inconsistent, unreliable and, in some instances, questionable as to its validity. In practice, pleas to misdemeanors can also pose a grave risk of adverse immigration consequences; however, New York’s case law on the matter thus far addresses only felony pleas.⁵ The lack of adequate information in this context is particularly troubling considering that the vast majority of convictions in New York State are resolved based on the plea bargaining process.⁶

Although the New York State Legislature enacted CPL§ 220.50 (7) requiring that a court inform a non-citizen defendant that a guilty plea may subject the defendant to deportation, little guidance is offered in statute or case law to properly address this complex legal issue. Courts are suggested to either provide a “short, straightforward statement” on the record notifying the defendant of possible deportation consequences or reciting an admonition contained in CPL § 220.50 (7). However, these suggestions “are illustrative, not exhaustive, of potentially acceptable advisements regarding deportation.”⁷ As a result, a myriad of plea colloquies are introduced by courts across the state attempting to meet due process requirements.

The Court Notification Bill would address these issues, ensuring standardized language for plea colloquies and providing additional assurances that immigrants would be aware of the immigration consequences of their pleas.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this legislation.

⁴ *Id.*, see also, *Padilla*, 559 U.S. at 360-61.

⁵ *Peque*, 22 N.Y.3d at 197.

⁶ “By one estimate, a criminal case is disposed of by plea bargaining every two seconds during a typical work day in America.” Ram Subramanian, Léon Digard, Melvin Washington II, and Stephanie Sorage, *In the Shadows: A Review of the Research on Plea Bargaining*, Vera Institute of Justice, Sept. 2020 (citing Joseph A. Colquitt, “Ad Hoc Plea Bargaining,” *Tulane Law Review* 75, no. 3 (2001), 695, 696).

⁷ *Peque*, 22 N.Y.3d at 184.