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**NEW YORK
CITY BAR**

**THE IMMIGRATION CONSEQUENCES
OF DEFERRED ADJUDICATION PROGRAMS
IN NEW YORK CITY**

**COMMITTEE ON
CRIMINAL JUSTICE OPERATIONS**

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**THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 WEST 44TH STREET, NEW YORK, NY 10036**

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A Report of the Association of the Bar of the City of New York

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I. Introduction

Immigrants in New York City may face many negative immigration consequences, including detention, deportation, and ineligibility for citizenship, as a result of even minor criminal charges, pleas, and sentences. These outcomes are often unexpected and unintended by anyone in the criminal justice system, particularly in the context of the city's innovative diversion programs and problem-solving courts. These courts and programs are designed to provide defendants with the means to break out of the cycle of recidivism and to overcome traditional barriers to reentry and reintegration into society following a criminal disposition. Defendants are given the opportunity to seek rehabilitation and treatment and earn a reduction in or dismissal of their charges. They then can return to their families and communities as productive, law-abiding individuals. Yet, due to the requirement of an upfront guilty plea for participation in these programs, many of the city's residents are not able to reach this ultimate goal. Noncitizens still face deportation and other negative immigration consequences as a result of participating in these deferred adjudication programs.

In a city where thirty-eight percent of its residents are foreign-born,¹ the stakes of failing to address these problems are high. It is impossible to know precisely how many people will be subject to deportation and other immigration problems due to deferred adjudication programs given the lack of statistics in this area, but many New Yorkers who are noncitizens and participate in such programs may be exposed to these unintended consequences. Given the scope of this problem, every person involved in criminal justice operations in New York City should be aware of these consequences and the appropriate players should be prepared to inform noncitizen defendants, their families, and communities of these risks. This report explains why noncitizens face deportation and other negative immigration consequences as a result of pleading guilty through deferred adjudication programs. It then discusses in further detail how these consequences affect defendants, their families and communities, as well as the key players in the criminal justice system including prosecutors, defense attorneys, judges, court programs, and reentry service providers. It then presents some alternative approaches that would enhance immigrant participation in diversion and rehabilitative programs and preserve their ability to rejoin their communities as productive and law-abiding individuals.

II. The Problem: Why Noncitizen Defendants Face Negative Immigration Consequences Due to Participation in Deferred Adjudication Programs

The criminal grounds triggering deportation, detention, and other negative immigration consequences have greatly expanded over the years through amendments to immigration law as well as case law interpretation. The extent of these negative immigration consequences often turns on whether the criminal disposition falls within certain immigration law categories

¹ U.S. Census Bureau, American Community Survey, New York City 2005.

including, but not limited to, “aggravated felonies,”² “crimes involving moral turpitude,”³ “controlled substance offenses,”⁴ and other categories. The scope of these categories is not necessarily intuitive—an “aggravated felony” in immigration law, for example, has been interpreted to cover offenses that are neither aggravated nor felonies.⁵ Similarly, dispositions that are not convictions under state law—such as a deferred adjudication program that results in the dismissal of all charges—may be considered “convictions” under immigration law and thus may trigger many of the categories described above that lead to deportation.

This section of this report explains why noncitizen defendants face deportation and other negative immigration outcomes due to their participation in deferred adjudication programs. Such outcomes are an unintended consequence of the interplay between the upfront guilty plea requirement in deferred adjudication programs and the broad definition of “conviction” in immigration law.

A. The Guilty Plea Requirement of Deferred Adjudication Programs in New York City

Many New York City courts, particularly problem-solving courts, offer deferred adjudication programs to eligible defendants. To participate in these programs, defendants are typically required to plead guilty to the charges against them. Rather than adjudicating guilt and entering a traditional sentence, however, courts that participate in these programs will instead defer adjudication while the defendant completes certain requirements, such as drug treatment or special classes combined with community service. The purpose of these programs is to provide the defendant with an alternative to incarceration through which he or she can seek rehabilitation and/or redress his or her wrongdoing, and thus break the cycle of recidivism. Successful participation in these programs often results in a reduction or dismissal of the charges and, in some cases, the sealing of the record. Because the defendant is not incarcerated and may avoid a more serious criminal record, the defendant often does not have to face the full extent of the barriers to reentry and reintegration into society that other defendants face after their experiences in the criminal justice system. This end result benefits not only the defendant, but also his or her family and community.

The diversion model commonly used in problem-solving courts across New York was not always based on deferred adjudication, however. Many programs in the state once operated on a pre-plea deferred prosecution basis—i.e., defendants could enter treatment and rehabilitative programs without having to plead guilty initially.⁶ If a defendant failed to comply with the

² See 8 U.S.C. § 1101(a)(43).

³ See 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1227(a)(2)(A)(i)-(ii).

⁴ See 8 U.S.C. §§ 1182(a)(2)(A)(i)(II), 1227(a)(2)(B)(i).

⁵ For example, a misdemeanor conviction for shoplifting with a sentence of a year may be considered a theft aggravated felony. See *U.S. v. Pacheco*, 225 F.3d 148 (2d Cir. 2000).

⁶ For example, Brooklyn’s Drug Alternative to Prison program began as a pre-plea diversion program. See The National Center on Addiction and Substance Abuse at Columbia University, *Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program* (2003) at ii, available at http://www.casacolumbia.org/Absolutenm/articlefiles/Crossing_the_bridge_March2003.pdf. In addition, several upstate New York drug courts did not require upfront guilty pleas. See Michael Rempel et al., *The New York State*

court-ordered program, his or her case would be put back on the calendar for prosecution. However, many prosecutors and court planners preferred using a post-plea deferred adjudication model, and even those programs that were initially based on the pre-plea deferred prosecution model began to require upfront guilty pleas. Prosecutors and court planners preferred the post-plea deferred adjudication model because it increased the defendant's motivation to comply with the court order and prevented the problems of stale evidence and lost witnesses that stemmed from delayed prosecutions. A defendant who complied with the court order would still get his or her charges reduced or dismissed—so using the deferred adjudication model was, in theory, not harmful for individuals who were successful in their efforts towards rehabilitation. However, few realized or considered how rehabilitated *noncitizen* defendants would be affected by the deferred adjudication model and its upfront guilty plea requirement. For such defendants, they remained “convicted” of a deportable offense for immigration purposes despite their compliance with the court order, due to the broad definition of “conviction” in immigration law.

B. The Broad Definition of “Conviction” in Immigration Law

Under the Immigration and Nationality Act (“INA”), a “conviction” for immigration purposes includes:

[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.

See INA § 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A). As would be expected, a typical criminal conviction (a guilty plea with entry of sentence, or a conviction as a result of a trial) meets the definition of “conviction” in immigration law. This is true even when the conviction is for a non-criminal offense, such as a “violation” under New York law. However, the definition of “conviction” in immigration law has also been interpreted to include dispositions that are not considered convictions under state law (such as a post-plea diversion program in which the defendant has entered a plea of guilty to some offense and the judge has ordered some form of substance abuse treatment or intervention program, which has been interpreted to be a punishment, penalty, or “restraint on liberty,” even in cases where no formal sentence or criminal conviction results). Thus, even where the court vacates the defendant's plea based on his or her successful compliance with the court order and never sentences him or her to any incarceration or probation, the combination of the defendant's initial guilty plea and the court-ordered program has been interpreted to meet the definition of “conviction” in immigration law.

There is little indication that this result—the deportability of individuals who successfully completed diversion and treatment programs as an alternative to incarceration—was intended by Congress when it codified the definition of “conviction” in the INA in 1996. At that time,

Adult Drug Court Evaluation (2003) at 18, available at <http://www.courts.state.ny.us/whatsnew/pdf/NYSAdultDrugCourtEvaluation.pdf>.

diversion programs did not necessarily require guilty pleas. For example, in 1996, Brooklyn’s Drug Treatment Alternative to Prison program—the model for prosecutor-led drug treatment diversion—was still based on a pre-plea, deferred prosecution system. When the National Association of Drug Court Professionals defined the “key components” of drug courts in a report issued through the Department of Justice in 1997, it did not include the upfront guilty plea requirement in its list. *See* National Association of Drug Court Professionals, Office of Justice Programs, U.S. Department of Justice, *Defining Drug Courts: The Key Components* (January 1997). It was in this context, in which upfront guilty pleas were not required for diversion, that Congress defined what constitutes a conviction for immigration purposes. Rather than specifying that immigrants should face deportation for their participation in pre-plea diversion programs, Congress focused instead on the consequences of guilty pleas.

Over the years, however, problem-solving courts and diversion programs in New York and across the country have increasingly required upfront pleas, a trend that Congress had no reason to foresee at the time the definition of “conviction” was codified. As previously mentioned, problem-solving court planners and diversion program practitioners viewed the upfront guilty plea as a means to ensure compliance with court orders. Prosecutors also favored the upfront guilty plea as a means to provide swift sentencing in the event that defendants failed out of their diversion and treatment programs, thus avoiding the problems associated with delayed prosecutions. However, the upfront plea requirement was not viewed as a mechanism for punishing *successful* participants of diversion and treatment or creating a barrier to their reintegration into society. The idea was that successful participants would still get their plea vacated and their charges dropped and be able to return to their families and communities as law-abiding individuals. Yet the interaction of the broad definition of “conviction” in immigration law and the application of the upfront plea requirement has resulted in the deportability of individuals who have rehabilitated themselves through successful completion of diversion programs—the ultimate unintended consequence.

III. The Consequences for Immigrants, their Families and Communities, and the Criminal Justice System

Immigrants and their families and communities face the most obvious difficulties given the prospect of deportation and permanent separation of families and communities. However, the immigration outcomes associated with deferred adjudication programs also have negative effects for individuals and entities throughout the criminal justice system. This section will explain what some of the unintended consequences of the problem are for various people involved in the criminal justice system.

A. Immigrants, their families and communities

All noncitizens (including lawful permanent residents, i.e., “green card holders,” as well as refugees/asylees, visa holders, and undocumented immigrants⁷) face negative immigration

⁷ As a practical matter, some diversion options are not available to undocumented immigrants due to their ineligibility for Medicaid (health insurance often being a requirement for participation in inpatient treatment programs, for example) and other funding limitations. Lawful permanent residents and other immigrants with lawful status generally can participate in the full range of diversion programs.

consequences as a result of a plea in a problem-solving court or as part of a diversion program, affecting their ability to live, work, support and remain with their families and communities in the United States. Many pleas result in mandatory detention and the initiation of deportation proceedings—even if the noncitizen defendant is a longtime lawful permanent resident and has a U.S. citizen family. Some of the consequences facing a noncitizen defendant who pleads guilty to an offense as part of a deferred adjudication program might include:

- Inability to obtain an official I.D. card
- Inability to work
- Inability to get housing
- Inability to get health insurance
- Inability to go to college
- Inability to travel outside of the U.S.
- Inability to renew permanent resident card (i.e., green card)
- Ineligibility for lawful permanent residence (i.e., green card status)
- Ineligibility for citizenship
- Initiation of deportation proceedings
- Immediate or imminent placement in immigration detention anywhere across the U.S.
- Ineligibility for waivers and other forms of relief from deportation
- Ineligibility for asylum even if faced with persecution abroad
- Lengthy or permanent exile from the U.S.
- Enhanced sentences upon reentry into the U.S.
- Inability to live or work safely in the country of deportation

Some of these consequences are more disastrous for a noncitizen defendant than any criminal penalty typically associated with the underlying offense itself. Individuals deported based on criminal dispositions will endure lengthy or permanent separation from family members, and may face dangerous and inhumane conditions in their native countries. Even for those noncitizens not immediately placed in deportation proceedings, many are left in a state of limbo, at risk of deportation, with necessities like employment, housing, and health insurance lost or in jeopardy.

Some individuals who enter deferred adjudication programs have prior convictions for which they may already be deportable. For these individuals, the guilty plea in a problem-solving court or through a diversion program may nonetheless pose a serious problem for their immigration status. For certain old convictions, noncitizens may still have certain forms of relief from deportation available to them—but a new “conviction” through a deferred adjudication program may eliminate that relief and any chance they will have to argue their equities in front of an immigration judge.

For defendants who are aware of the negative immigration consequences of a guilty plea, the severity of deportation creates incentives for them to choose to go to trial rather than plead guilty and participate in the treatment or services that a deferred adjudication program may offer. These individuals might otherwise be inclined to participate in the special programs and treatment opportunities, but refuse because they realize that a guilty plea will subject them to deportation.

Ultimately, the families and communities of the defendants suffer the consequences when their relatives and community members do not receive treatment and services through these special programs or receive treatment and services but are later deported. Families and communities lose wage-earners and caretakers who would otherwise rejoin them as law-abiding and productive individuals following a criminal disposition. Many communities suffer an even larger loss when whole families are uprooted because the primary wage-earner or caretaker is deported. In these ways, the current system undermines the purpose and effectiveness of these deferred adjudication programs for immigrant defendants, their families and communities, and society as a whole.

B. Prosecutors, defense attorneys, judges, court programs and reentry service providers

These deportation risks and the broad definition of conviction create problems not only for defendants, but also for prosecutors, defense attorneys, judges, court programs and reentry service providers, and the criminal justice system as a whole.

Prosecutors who work with problem-solving courts and diversion programs in New York City indicate that some noncitizen defendants and their defense attorneys are not aware of the deportation consequences of their participation in deferred adjudication programs. In some cases, no one in the criminal justice system is aware that the defendant is a noncitizen, only to discover the fact later when the Department of Homeland Security initiates removal proceedings against the defendant. Some prosecutors have expressed concern about these unexpected results, particularly where they, along with the court and defense attorneys, had assured the defendant that he or she would get to return to his or her family and community upon successful completion of court requirements. In cases where defendants were unaware of or misinformed about the immigration consequences, prosecutors report that they are increasingly dealing with motions to vacate dispositions under NYCPL § 440. In cases where the defendant and the defense attorneys are aware of the immigration consequences, prosecutors report an increase in refusals by defendants to participate in deferred adjudication programs given the knowledge that the plea requirement means deportation.

Defense attorneys similarly point out problems in advising clients whether to participate in deferred adjudication programs. In some cases, defense attorneys feel that deferred adjudication programs would be appropriate for their clients, if it were not for the negative immigration consequences. In such cases, defense attorneys advise their clients not to participate unless they are willing to face the deportation risks. Some defense attorneys also report that many of their fellow defense attorneys are not aware of the negative immigration consequences of deferred adjudication programs that do not result in criminal convictions. Sometimes, defense attorneys are just as surprised as their clients to learn that their clients have become deportable.

Judges are feeling the effects of these problems as well. Some judges feel uncertain of what to advise defendants who may or may not be citizens in their courts, particularly in cases where a disposition is not even a conviction under state criminal law. New York State has an immigration advisal law that requires state court judges to advise defendants charged with felony offenses of the possible immigration consequences of their pleas. *See* NYCPL §220.50(7).

However, the law does not provide any mechanism for defendants to seek redress in the event that a state court judge fails to provide this advisal. *See id.*⁸ Moreover, by its terms, the statute only applies to felony charges. *Id.* Even where the statute applies, some judges—including judges in problem-solving courts—do not routinely include an immigration advisal in their plea allocutions. Sometimes, judges are unaware that immigration issues exist until a defendant is taken into immigration custody in the middle of a pending deferred adjudication case, or until a defendant returns to court years later to seek a vacatur of an old disposition.

Reentry service providers and court programs face similar problems—confusion over what offenses will lead to deportation of their clients, as well as surprise and uncertainty when a participant is suddenly pulled from treatment or another diversion program due to deportation proceedings. Even for those defendants who successfully complete a program, some service providers have difficulty in placing them in housing, securing employment opportunities, and providing other services because the individuals are potentially deportable and thus may have problems in renewing their permanent resident cards, obtaining health insurance, or attending school. Increasingly, some court programs and reentry service providers are also finding that they are losing opportunities to work with immigrant clients altogether, because noncitizens are being advised not to enter deferred adjudication programs due to the deportation risks.

For each of these key players in the criminal justice system, the broad definition of conviction in immigration law and its application to deferred adjudication dispositions have created problems. Defendants, their families and communities, prosecutors, defense attorneys, judges, reentry service providers and court programs have all faced difficulties due to these consequences.

IV. Survey of Alternatives

Some people involved in the criminal justice system in New York City have expressed concern over whether pre-plea diversion programs could work for various types of offenses. This section of the report discusses a small selection of pre-plea diversion programs that have operated on the federal level and within various jurisdictions within New York State and elsewhere across the country. These programs provide examples of dispositions that are meaningful alternatives to *both* incarceration *and* deportation. These programs are available for all eligible defendants—citizens and noncitizens alike. However, in some instances, the immigration consequences of a particular plea may be part of the reason a defense attorney will argue that a pre-plea diversion program is particularly appropriate for his or her client.

⁸ The law specifically states that “[t]he failure to advise the defendant pursuant to this subdivision shall not be deemed to affect the voluntariness of a plea of guilty or the validity of a conviction, nor shall it afford a defendant any rights in a subsequent proceeding relating to such defendant’s deportation, exclusion or denial of naturalization.” NYCPL § 220.50(7).

A. Federal pre-plea diversion

The federal government operates a Pretrial Diversion Program for certain individuals arrested on federal charges.⁹ To participate in the federal program, eligible individuals must waive their rights to a speedy trial and presentment of their cases within the statute of limitations, and must enter into a pretrial diversion agreement. They are not required to admit their guilt or formally plead guilty. Successful completion of program requirements will result in the dismissal of charges.

B. Programs and alternatives already operating in New York State

Some jurisdictions in New York State offer pre-plea diversion programs in certain cases. For example, the Pre-Trial Services Corporation of the Monroe County Bar Association offers pre-trial, pre-plea diversion opportunities for defendants charged with certain low-level New York offenses.¹⁰ The program is voluntary and the criminal court must approve the option for the defendant. The defendant does not have to plead to the underlying charge, but instead must agree to participate in counseling and/or treatment to address the issues that brought him or her to the attention of the criminal justice system. Participation in such a program, where no plea is required and no formal admissions of guilt are made in the court record, would be a viable alternative for citizens and noncitizens alike, because such dispositions would not lead to deportation.

While such formally-structured pre-plea diversion programs are not prevalent in New York State, many jurisdictions have permitted such pre-plea alternatives to be offered on a case-by-case basis. Some defendants in New York City, for example, have been permitted to participate in special diversion programs without having to enter an upfront guilty plea. These examples are few and far between, however, and represent a departure from the post-plea norm in most New York City diversion programs and problem-solving courts.

C. Programs and alternatives used outside of New York State

Several states across the country have developed their own pre-plea diversion programs. Because these programs do not require an up-front guilty plea, they do not, generally speaking, trigger deportation for noncitizen defendants. Some of the states that have such programs include:

Connecticut: Connecticut law provides a number of pretrial disposition programs that do not require the defendant to plead guilty or to admit sufficient facts to warrant a finding of guilt, and which will therefore not count as a “conviction” for immigration purposes. Such programs include, but are not limited to: (a) Accelerated Pretrial Rehabilitation, for certain low-level offenses (including some felonies under certain circumstances), Conn. Gen. Stat. § 54-56e; (b) Pretrial Family Violence Education Program, for certain low-level family violence offenses

⁹ More information about the federal Pretrial Diversion Program can be found on the U.S. Dept. of Justice website at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/22mcrm.htm#9-22.100 and at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00712.htm.

¹⁰ For more information, see the Monroe County Bar Association website at www.mcba.org and the Monroe County Alternatives-to-Incarceration Division website at <http://www.monroecounty.gov/safety-ati.php>.

(including some felonies under certain circumstances), Conn. Gen. Stat. § 46b-38c(g); (c) Pre-trial School Violence Prevention Program, for certain offenses committed by students under certain circumstances, Conn. Gen. Stat. § 54-56j; (d) Pretrial Alcohol Education System, for certain offenses related to the operation of a motor vehicle or vessel while under the influence of alcohol or drugs, Conn. Gen. Stat. § 54-56g; (e) Pretrial Drug Education Program, for certain drug offenses, Conn. Gen. Stat. § 54-56i.

New Jersey: New Jersey law authorizes a dismissal of charges upon the completion of a Pre-Trial Intervention (PTI) program, for which an upfront plea or admission of guilt is not required. *See* N.J. Stat. § 2C:43-12. Eligibility for participation in PTI is determined on a case-by-case basis, considering the factors described in the New Jersey statute. *Id.* New Jersey law also permits the suspension of prosecution and placement in supervisory treatment, without an upfront guilty plea, for certain low-level offenses involving drugs. *See* N.J. Stat. § 2C:36A-1(a)(1).

Vermont: Vermont law authorizes a diversion program through which certain defendants may enter into a diversion contract with the prosecutor in the case. *See* 3 V.S.A. § 164. The defendant does not have to plead guilty and the court does not adjudicate the defendant's guilt. If the defendant successfully completes the terms of the contract, the prosecutor will dismiss the case.

In addition, various cities and counties have adopted pre-plea diversion programs that are not necessarily tied to any particular state statute:

Seattle, Washington State:¹¹ The Domestic Violence Unit of the Seattle City Attorney's Office uses deferral agreements on a case-by-case basis, which do not require a defendant to plead guilty or admit guilt in court.

Cook County, Illinois (Chicago):¹² Cook County State's Attorney's Office offers a Drug School Program for certain eligible defendants faced with drug charges. A defendant who participates in the program waives the right to a preliminary hearing and agrees to attend drug education classes. The defendant does not enter a plea with the court and the court does not adjudicate the guilt of the defendant. If the defendant successfully completes the required classes, the case against him or her is dismissed.

These federal, state, and local programs are only some of the examples of pre-plea diversion programs that are available by statute or policy. They may provide models for how criminal justice planners in New York City can craft alternatives to incarceration that will be truly accessible to citizens and noncitizens alike.

¹¹ More information about the deferral agreements used in Seattle, WA, can be found on the Washington Defenders Association Immigration Project website at http://www.defensenet.org/immigration/immig_main.htm.

¹² More information about the Drug School can be found by contacting the Cook County State's Attorney's Office. *See* www.statesattorney.org.

V. Recommendations

Under the recent amendment to New York Penal Law § 1.05(6), one of the core goals of sentencing in New York is to promote the defendant's "successful and productive reentry and reintegration into society." Thus, courts must consider how a particular disposition will affect a defendant's ability to reintegrate into society. In many ways, deferred adjudication programs are designed to ease a defendant's ability to reintegrate into society—yet they provide little hope for noncitizen defendants. For many of the residents of this diverse, heavily immigrant-populated city, the primary obstacle to reintegration is the threat of deportation and other negative immigration consequences. In light of the severe consequences that noncitizen defendants may face, we offer the following recommendations for crafting diversion programs and other alternatives to incarceration in New York City. These recommendations focus on ensuring better awareness and advisal of defendants regarding the consequences of New York City's current special diversion programs, as well as calling for increased flexibility in dealing with cases where all sides agree that the individual can benefit from rehabilitation and a chance to rejoin his or her family and community.

A. Advisal of immigration consequences

First and foremost, defendants should be aware of the immigration consequences of their participation in deferred adjudication programs. Defense attorneys should advise defendants of these consequences prior to the entry of a guilty plea. In addition, New York State's immigration advisory statute should be strengthened, by, for example, requiring court advisal of immigration consequences in all cases (not just felonies) prior to the entry of a guilty plea, including cases involving pleas to misdemeanors and lesser offenses that are handled through diversion programs and problem-solving courts. Courts also should develop model colloquies to ask defense counsel whether they have ascertained the immigration status of their clients and advised them of immigration consequences of their pleas. If defense counsel has not done so, then courts should provide time for that issue to be explored. Where no advisory is given and the plea record is silent as to immigration consequences, courts should entertain subsequent applications in appropriate circumstances for plea withdrawal or vacatur.

B. Pre-plea diversion and other alternatives

Deferred adjudication programs and problem-solving courts in New York City should also consider adopting more flexible approaches to diversion in appropriate cases for citizens and noncitizens alike, including:

Pre-plea diversion: In light of the difficulties faced by noncitizen New Yorkers due to criminal dispositions, diversion programs and problem-solving courts in New York City should consider whether, in appropriate cases, defendants could be permitted to enter programs for treatment or other services without having to enter a guilty plea or make any admissions of guilt on the record. Such pre-plea diversion alternatives could be similar to the "deferred prosecution" model that initially characterized the DTAP program in Brooklyn, or modeled after pre-plea programs currently adopted in

certain jurisdictions in upstate New York and in other states across the country. This option should be employed in appropriate cases for citizens and noncitizens alike.

Pre-plea diversion with additional requirements: As an alternative in cases where courts may be unwilling to proceed without some assurance that the defendant can be quickly held accountable if he or she fails to comply with treatment or other court-ordered intervention programs, diversion programs and problem-solving courts should consider whether, instead of a formal plea, a stipulation/contract-based disposition can be crafted to give the court or prosecutor a tool by which to facilitate compliance by the defendant (but will preserve the defendant's opportunity to rejoin his or her family and community following treatment and/or services). Such stipulations/contracts could be modeled after the few New York City cases that have attempted these dispositions and/or the agreements used in other jurisdictions such as Seattle, Washington or Chicago, Illinois.

Alternative pleas: Finally, every deferred adjudication program or problem-solving court in New York City should assess whether noncitizen defendants can participate in their programs by pleading guilty to an applicable offense that carries criminal consequences but will not lead to deportation. This option should be used as a last resort where pre-plea diversion is not available.

Allowing a flexible approach will ensure that deferred adjudication programs and problem-solving courts will provide meaningful alternatives for citizens and noncitizens alike. Taking these steps will help our city reach the goal of ensuring every New Yorker's successful reintegration in society following a criminal disposition.

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