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(By appointment only)

Honorable [NAME OF JUDGE]
1 W Main St,
Batavia, NY 14020

[DATE]

Re: *People v. NAME OF DEFENDANT*

I am an attorney who provides advice on the immigration consequences of criminal cases (commonly referred to as “*Padilla* advisals”). This letter is prepared for the use of [NAME], Esq. in his representation of his client in criminal proceedings.

I have reviewed the case of the *People v. [NAME]*, including the criminal complaint filed in said case and have obtained detailed information regarding his immigration status.

At this point in time, Mr. [NAME], who came to the United States legally, is eligible to receive Lawful Permanent Residency (a Green Card). However, Mr. [NAME] previously submitted this same application *pro se* which was ultimately denied due to an error in the complex immigration paperwork. He has now retained the services of an attorney with Legal Assistance of Western New York, who I have confirmed is expeditiously preparing a second petition for legal immigration status. As a result, while Mr. [NAME] will soon obtain permanent legal status in the United States, he is particularly vulnerable to arrest and long term detention by immigration authorities until this is granted.

As a result, it is my advice that if Mr. [NAME] is released from criminal custody without a resolution of the criminal case (especially with a pending felony charge) it is extremely likely that he will immediately be arrested and transported to Buffalo Federal Detention Center in Batavia, New York. If he is transferred to federal immigration custody, Mr. [NAME] will not be able to appear before this Honorable Court to dispose of this case, nor is it likely that the federal authorities will produce him.

Mr. [NAME] would thus be caught in a ‘catch 22’; he cannot dispose of the criminal case because he is in immigration custody and cannot obtain release from immigration custody because of a pending immigration case.

Furthermore, based on personal experience as a practicing immigration attorney, the period between an arrest by Immigration and Customs Enforcement and an individual's first custody review in immigration court is currently reaching between 2 and 3 months. This means that regardless of his options in Immigration Court, he will be detained for that period, during which time he will not be able to fully cooperate with his criminal defense attorneys. In this way, the consequences of release from criminal custody without a criminal disposition to a non-citizen in Mr. [NAME]'s position are drastically different to a similarly situated citizen.

It is my understanding that the People and Mr. [NAME]'s defense counsel have agreed a proposed disposition of this case, namely a Disorderly Conduct, contrary to NYPL 240.20.

Because Mr. [NAME]'s application for a Green Card is discretionary, then regardless of the outcome of this case, he must disclose the factual basis of the conduct underpinning the instant charges. As such, while a conviction for Disorderly Conduct will not bar him from applying for permanent status, he will nevertheless have to justify that he remains deserving of this discretionary benefit, notwithstanding his alleged conduct.

Any alternative dispositions, however, could have the effect of **barring** him from asking for a Green Card, regardless of any positive equities he may have. In particular, alternative dispositions other than a disorderly conduct – such as the initial charges - could render Mr. [NAME] deportable as having committed:

- a crime involving moral turpitude [8 USC § 1227(a)(2)(A)(I); or
- a crime of domestic violence [8 USC 1227(a)(2)(E)(i)]

Each of these may render a non-citizen deportable and will subject them to mandatory detention during such proceedings pursuant to 8 USC 1226(c) (Immigration proceedings may take as long as two years). Again, for this reason, the consequences of a criminal disposition in this case to a non-citizen in Mr. [NAME]'s position are drastically different to a similarly situated citizen.

Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jackson", with a large, stylized loop at the end.

Daniel Jackson