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**Acting Brooklyn District Attorney Eric Gonzalez Announces New Policy
Regarding Handling of Cases against Non-Citizen Defendants**

*Will Aim to Prevent Collateral Consequences of Convictions by
Being Aware of Immigration Status of Defendants and Offering Appropriate Pleas;
Two Newly-Hired Immigration Attorneys will Train Staff and Advise on Offers*

Acting Brooklyn District Attorney Eric Gonzalez today announced that his Office is implementing a new policy aimed at minimizing collateral immigration consequences of criminal convictions, particularly for misdemeanor and other low-level offenses. The Brooklyn District Attorney's Office has hired two immigration attorneys to train all staff on immigration issues and to advise prosecutors when making plea offers and sentencing recommendations on cases of non-citizen defendants in an effort to avoid disproportionate collateral consequences, such as deportation, while maintaining public safety.

Acting Brooklyn District Attorney Gonzalez said, "I am committed to equal and fair justice for all Brooklyn residents – citizens, lawful residents and undocumented immigrants alike. Now more than ever, we must ensure that a conviction, especially for a minor offense, does not lead to unintended and severe consequences like deportation, which can be unfair, tear families apart and destabilize our communities and businesses. In Brooklyn, we have been proactive in protecting immigrants from fraud and hate crimes and now, with the unprecedented hiring of immigration attorneys and the implementation of this policy, we continue to lead on this important issue."

"I want to emphasize that our Office is not seeking to frustrate the federal government's function of protecting our country by removing non-citizens whose illegal acts have caused real harm and endangered others. Rather, our goal is to enhance public safety and fairness in the criminal justice system and this policy complements, but does not compromise, this goal. We will not stop prosecuting crimes, but we are determined to see that case outcomes are proportionate to the offense as well as fair and just for everyone."

The New York Immigration Coalition Executive Director Steven Choi said, "The New York Immigration Coalition (NYIC) congratulates Acting District Attorney Gonzalez on this significant initiative. This is an important step to protect Brooklyn's large and diverse immigrant

population. Misdemeanors and low-level offenses often trap immigrants who are unfamiliar with the legal process – and potentially expose them to harsh ‘double punishment’ of being deported and ripped from their families. The New York Immigration Coalition looks forward to the program’s success and eventual expansion. After all, this is our New York, one that fights for justice of all people.”

Hispanic Federation President Jose Calderon said, “Brooklyn District Attorney Eric Gonzalez's decision to inform non-citizens of immigration-related consequences when facing possible criminal conviction is a game-changer and long overdue reform. For far too long, our justice system has carelessly triggered double jeopardy for immigrants, who were unaware of all their legal options that may impact their ability to remain with their families in this country. We applaud this new policy and hope it will serve as a national model for truly fair, humane justice for all.”

The Black Institute Founder and President Bertha Lewis said, “The Black Institute has been working on immigration issues from a black perspective for over seven years, and we are grateful and excited that DA Gonzalez has given recognition to this timely and extremely necessary matter. About a third of Brooklyn’s population hails from another country with Africans, Caribbean, Latinos, Afro-Latinos, Eastern Europeans, Mexicans, Asians and immigrants from every corner of the globe calling this borough home. We need to protect their rights now more than ever.”

The Acting District Attorney said that non-citizen defendants may face harsh immigration penalties as a result of criminal convictions, even for minor offenses. Lawful residents (green card holders or students, workers, visitors, refugees and asylees with valid visas) can face deportation, detention during removal proceedings, bars to re-admittance into the country and negative effects on applications for permanent residency or citizenship. A conviction for undocumented immigrants can make them a priority for deportation enforcement or eliminate the possibility of the cancellation of removal proceedings that might be otherwise available based on length of stay, marriage, extreme hardship and other factors.

According to federal law, four factors primarily affect how a conviction impacts a defendant’s immigration consequences: 1. Nature of the crime. Certain offenses, like those involving a controlled substance, domestic violence, firearms, crimes against a child and crimes of moral turpitude, are prioritized and can be determinative on how a state offense is treated for immigration purposes. For instance: some state misdemeanors, like possession of marijuana and petit larceny, are considered felonies for immigration purposes, while trespass and unauthorized use of a vehicle are not. 2. Length of sentence. Certain misdemeanor dispositions are tantamount to aggravated felonies for immigration purposes. 3. The length of the defendant’s stay in the United States. 4. Whether the defendant has prior convictions and the nature of such convictions.

Given the complexity of the law, a blanket set of guidelines is not applicable when attempting to prevent unintended collateral consequences, and any determination must be made on a case-by-case basis. Accordingly, the new policy instructs the following:

- When reviewing a case, whether at the initial stages or further along its pendency, all staff must be alert to a defendant's possible non-citizen status. If such possibility exists, the Assistant District Attorney must flag that fact to defense counsel and note that immigration consequences may be an issue.
- In determining an appropriate plea offer or a sentencing recommendation after trial, every case must be evaluated on its merits so that justice is served. Among the several factors to be considered are the defendant's present and future immigration status and any humanitarian factors, such as hardships if the defendant were deported. Whenever possible, if an appropriate disposition or sentence recommendation can be offered that neither jeopardizes public safety nor leads to removal or to any other disproportionate collateral consequence – the ADA should offer that disposition or make that recommendation.

To reach an immigration-neutral disposition, ADAs may consider alternative offenses the defendant can plead to as well as reasonable modifications to the sentence recommendation. When possible, the alternative should be similar in level of offense and length of sentence to that offered to a citizen defendant, while the charge may be different. For example, a plea to a misdemeanor trespass may be offered when appropriate instead of a misdemeanor drug offense. In certain instances, it may be appropriate to offer a non-citizen defendant a plea for a lesser offense in light of the disproportionate immigration consequences a higher level offense may result in.

- Two attorneys with specific expertise in immigration laws as well as broad knowledge of other collateral consequences (bars to housing, education opportunities, etc.) are joining the District Attorney's staff. They will act as a resource to the entire Office, consulting on individual cases and providing targeted training to all ADAs.

The District Attorney's Office recognizes that there may be times when crafting an immigration-neutral disposition would be very difficult and there may be stumbling blocks that cannot be overcome in certain cases. It also recognizes that many felony convictions, especially for violent felonies, will come attached with inevitable – and often appropriate – collateral immigration consequences. Finally, the policy complements current practices pursuant to New York City's status as a sanctuary city, under which the Office does not share immigration status of victims and witnesses with federal authorities and encourages all residents to report crimes and cooperate with investigations without fear of reprisals.

The Brooklyn District Attorney's Office has done much to prevent immigrants from becoming victims of crime and to assist those who become victims. That includes well-attended Immigration Forums in several communities that are now being held on a monthly basis; an active Hate Crimes Unit and a robust Immigrant Fraud Unit that is specifically tasked with investigating crimes against immigrants; a regular review of U-Visa applications of witnesses and victims; a culturally diverse team of counselors in the Victims Services Unit; and more. The Office has also been responsive to defense attorneys' requests to take immigration status of their clients into account when offering or reviewing dispositions.

The Acting District Attorney said that while these efforts have been important, prosecutors must do more and take a more proactive role in making sure that a conviction for a minor offense does not lead to a severe and unjust outcome.

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