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Over 40 Elected Prosecutors Call Upon Department of Justice to Respect Prosecutorial Discretion

Amicus Curiae Brief Urges Department of Justice to Continue to Defer to State and Local Decisions Impacting Immigration Determinations

WASHINGTON, D.C. – Today 43 local elected prosecutors and state Attorneys General from across the country filed an [amicus curiae brief](#) urging the Department of Justice to maintain well-established immigration court authority that gives deference to state and local decisions that affect immigration determinations. The brief is in response to Attorney General Barr’s [call for feedback](#) on a potential rule change that would give federal authorities unlimited ability to consider past convictions and sentences as grounds for deportation from the United States, even when those convictions are minor or deemed unjust and have been vacated or modified by local prosecutors or judges. Amici argue that the proposed rule change would break with decades of precedent, thereby infringing on state sovereignty and impairing the ability of elected prosecutors to enforce their own criminal laws and exercise prosecutorial discretion in the interest of their own community’s safety. It would also put countless immigrants at new risk of deportation, including in cases where past convictions and sentences were revisited based on defects in the underlying cases.

“Prosecutors are ministers of justice charged with protecting their community and the integrity of the justice system by pursuing a fair result that promotes trust in the system,” said **Miriam Krinsky, Executive Director of Fair and Just Prosecution**. “Sometimes that duty includes revisiting old cases where incorrect, unjust or excessive sentences were imposed, and for immigrants, sometimes that means assessing whether penalties would inflict disproportionate harm on that individual, their family, and the community simply because of their immigration status. Any change to decades of immigration procedures and precedent would unduly limit the discretion of elected prosecutors and infringe on state and local rights.”

The brief brings together the voices of 43 elected prosecutors from around the nation – including Attorneys General from 7 states and 36 elected local prosecutors in urban and rural jurisdictions. It was authored by Matthew Biben, David Sarratt, Gabriel Panek, and H Jacqueline Brehmer of the law firm [Debevoise & Plimpton LLP](#), and Tali Farhadian Weinstein of the [Kings County District Attorney’s Office](#), with the assistance and coordination of [Fair and Just Prosecution](#), a non-profit organization dedicated to promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility.

“Justice requires a careful consideration of the facts of each case,” said **Eric Gonzalez, District Attorney for Kings County** (Brooklyn, New York). “This type of evaluation is best done at the local level with a consideration of community needs, which is why Congress and the Board of Immigration Appeals has long deferred to the state’s discretion to make criminal justice decisions regarding criminal convictions and sentences—including decisions to modify those convictions and sentences. This discretion is critical, and if

ignored would create countless injustices that would erode public trust that the justice system is fair, and ultimately harm the ability of law enforcement to keep communities safe.”

To explain the importance of the current scheme, Gonzalez offered the example of a burglary conviction vacated following an investigation by his Conviction Review Unit, in which they found that the defendant, a green card holder who would have faced deportation for the offense, was falsely accused of a crime which never occurred. Underscoring the importance of recognizing these decisions, **District Attorney Gonzalez** said, “It would have been absurd for the federal government to ignore this post-conviction finding and deport the man anyway and would be equally unjust to ignore countless other discretionary decisions regarding old convictions and sentences made in state courts.”

Amici also emphasized the potential public safety ramifications of changing settled immigration rules.

“If immigrants face deportation for convictions which have been vacated because they were innocent or because of violations of due process, that throws into question the legitimacy of the entire justice system,” said **John Chisholm, District Attorney for Milwaukee County** (Wisconsin). “When people don’t trust the justice system, witnesses are less likely to cooperate with the police and victims of crimes are less likely to come forward. An adverse ruling in this matter necessarily has the potential to harm the safety of our communities.”

Amici represent a diverse set of elected leaders from across the country, including **Attorneys General TJ Donovan** (Vermont), **Keith Ellison** (Minnesota), **Robert Ferguson** (Washington), **Aaron Ford** (Nevada), **Kathy Jennings** (Delaware), **Karl Racine** (District of Columbia), and **Kwame Raoul** (Illinois); **District Attorneys Sherry Boston** (Decatur, GA), **John Chisholm** (Milwaukee, WI), **Satana Deberry** (Durham, NC), **Michael Dougherty** (Boulder, CO), **George Gascón** (San Francisco, CA), **Sim Gill** (Salt Lake City, UT), **Eric Gonzalez** (Brooklyn, NY), **Lawrence Krasner** (Philadelphia, PA), **Beth McCann** (Denver, CO), **Spencer Merriweather** (Charlotte, NC), **David Soares** (Albany, NY) **Raúl Torrez** (Albuquerque, NM), and **Cyrus Vance** (New York, NY); **Prosecuting Attorneys Dan Satterberg** (Seattle, WA) and **Carol Siemon** (Lansing, MI); and **State Attorney Andrew Warren** (Tampa, FL).

Read the brief [here](#), and for a full list of the 43 signatories see below. For any questions about the brief or to speak to any of the signatories, please contact Miriam Krinsky at krinskym@krinsky.la or 818-416-5218.

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP’s work, visit <http://www.fairandjustprosecution.org/> or follow us on Facebook [@FairAndJustProsecution](#).

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