



**Testimony of Leland Baxter-Neal, Staff Attorney
In Support of HB 2932 – Equal Notice Right
House Committee on Judiciary
03/18/2019**

Chair Williamson and Members of the Committee:

The American Civil Liberties Union of Oregon¹ supports HB 2932, which will promote fairness, safety, and access to justice in Oregon courts. It will do this by (a) prohibiting courts from inquiring into a defendant’s immigration status or requiring the defendant to disclose immigration status at the time of a plea, or at any other time during criminal proceedings; and (b) ensuring that defendants are informed of the potential immigration consequences of their case and have an opportunity to obtain additional legal advice.

It is in the interest of every Oregonian to encourage court appearances. Our court system requires participation—by defendants, witnesses, and victims—to function correctly. Without participation, cases are delayed, issues are left unresolved, and justice is lost.

When community members fear that appearing in court may result in exposure to immigration enforcement, their participation in court proceedings and interactions with local government are deterred. Such barriers make Oregonian immigrants afraid to report crimes, seek protective orders, show up as witnesses in court, or to take responsibility for one’s harmful conduct. A nationwide survey conducted by our national organization found that a fear of immigration consequences is severely deterring access to courthouses.²

This has serious consequences for survivors of violent crime and domestic violence, as well as child abuse and trafficking investigations. For example, the 2018 study found that fifty-four percent of judges surveyed reported that court cases were interrupted due to

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 45,000 members and supporters statewide.

² American Civil Liberties Union, “Freezing Out Justice” (2018) available at <https://www.aclu.org/issues/ice-courthouse>.

an immigrant crime survivor's fear of coming to court. The vast majority of prosecutors surveyed—82 percent—said that, since the recent sharp increase in immigration enforcement at courthouses, domestic violence has become underreported and harder to prosecute. A majority of prosecutors also reported that it was harder to investigate and prosecute sexual assault and human trafficking, and 48 percent said it was harder to investigate and prosecute reports of child abuse.

HB 2932 will address these issues and make our justice system more equitable and safe for all participants by prohibiting the court from unnecessarily putting a defendant's immigration status on the record. There is almost no circumstance under which an individual's immigration status will be relevant to their criminal proceeding, especially when that individual is deciding to plead guilty. Yet, we are aware that in various jurisdictions around the state, judges routinely ask defendants to state, on the record, their immigration status, often at the time of a plea.

HB 2932 will also help to ensure that Oregon meets its constitutional obligations under the Sixth Amendment of the Constitution. These obligations were outlined in *Padilla v. Kentucky*, where the Supreme Court confirmed that defendants have a right to advice from counsel about the potential immigration consequences of their criminal charges and convictions, and that failure to provide such advice constitutes ineffective assistance of counsel, in violation of the Sixth Amendment.

This will be accomplished by ensuring that judges play a role in informing defendants about the fact that there may be potential immigration consequences of a plea agreement or conviction, and by giving defendants an opportunity to obtain additional legal advice before proceeding with a potentially life-altering decision.

These policy changes are crucial for ensuring access to justice for all Oregonians. For these reasons, the ACLU of Oregon urges you to support HB 2932. Please feel free to contact us if you have any questions, comments, or concerns.