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dignity and respect for their human and civil rights.*

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## **Gabriel<sup>1</sup>: Stripped of Lawful Permanent Residence A Case Study Demonstrating the Need for the Virginia Justice Program**

Gabriel is a young man whose involvement in the criminal justice system left him stripped of his lawful permanent resident status and facing a life of uncertainty in the United States. Only 23 years old, Gabriel came to the United States from Ethiopia along with his family when he was a young boy of nine. He obtained asylum as a derivative of his parents, and subsequently became a green card holder (or “lawful permanent resident”). Gabriel and his family adjusted well to their new lives in the United States until 2010, when Gabriel’s father lost his job. Although he was a high achiever in high school, Gabriel found himself unable to go to a four year college because of his parents’ financial struggles. Despondent, he turned to alcohol and drugs and became involved with the criminal justice system. Underlying this difficult time in his life were mental health challenges that came to the fore when Gabriel became a young adult.

In 2013, Gabriel was arrested and charged with petit larceny in a local Virginia court. On the advice of appointed counsel, Gabriel pled guilty and received a sentence of 12 months, of which all 12 months were suspended. Gabriel’s attorney did not advise him of the disproportionate immigration penalties that would flow from his plea. Those immigration penalties included the categorization of his conviction as an “aggravated felony” by Immigration and Customs Enforcement, triggering mandatory immigration detention – without access to a bond hearing – and deportation proceedings. Gabriel was detained in a remote immigration jail for more than six months, separated from his family and struggling with his mental illness. When he was finally able to see an Immigration Judge, Gabriel was not permitted even to ask to maintain his lawful permanent resident status because his conviction rendered him ineligible for any relevant waiver. Gabriel was able to obtain only a limited and temporary form of protection known as “withholding of removal.” Pursuant to this status Gabriel may reside in the United States and apply annually for work authorization, but he has no path to lawful status or citizenship and resides under the shadow of a final order of deportation.

Had Gabriel’s public defense attorney been able to consult with an immigration expert prior to negotiating a plea with the prosecutor, she would have learned that even though all 12 months of Gabriel’s sentence were suspended they would nonetheless count fully for immigration purposes. She would also have learned that a suspended sentence of 364 days – only one day less than the full year Gabriel received – would have preserved Gabriel’s eligibility for a defense to deportation called cancellation of removal. Had Gabriel won cancellation of removal, he would remain in the United States today as a lawful permanent resident. The constitutionally inadequate advice Gabriel received is all too common for indigent non-citizen defendants throughout Virginia. In Gabriel’s case, the consequences will remain with him for the rest of his life.

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<sup>1</sup> Name changed to protect privacy