

Immigration Matters



By Evan D. George

Editor's Note: Immigration Matters is a new feature in the Forum 8 written by Evan D. George. Evan is a Gainesville native and UF Law graduate who practiced with a prominent Manhattan immigration law firm for three years before returning

home to Gainesville. In addition to his expertise in immigration law, including political, religious and sexual orientation based asylum, Evan shares space with and is "Of Counsel" to the Law Office of Larry E. Ciesla, where he is working in the areas of guardianship and probate.

Immigration matters directly affect a wide cross-section of societal issues, including economics, labor, politics, religion, race, family unity, and criminal justice. In Florida, changing demographics increasingly translate into immigration-related legal questions for area attorneys representing noncitizens in the United States. There are myriad issues where a client's lack of lawful resident status can affect their potential legal position, liability or availability of relief. While Lou Dobbs and others might vehemently wish this issue away, immigration, and the complicated patchwork of federal statutes and regulations governing it, will undoubtedly remain a national issue of great import with serious consequences for Florida residents, families and businesses.

Possibly more than any other area, criminal defense intersects with immigration law, with potentially grave consequences for a noncitizen facing criminal charges. Over the past decade, and especially in the aftermath of the 9-11 terrorist attacks, the funding, resources and vigilance of U.S. immigration enforcement agencies has spiked dramatically. In this climate, criminal defense attorneys play a vital role in ensuring that a plea agreement or underlying conviction does not, inadvertently, have serious collateral consequences for their client's immigration status.

The removal of noncitizens from the United States, including legal permanent residents (green card holders), is separated into charges of inadmissibility and deportability. Inadmissibility deals with noncitizens who are seeking admission into the United States, or who are physically present without ever being inspected or admitted. Deportability, rather, deals with noncitizens who, after being admitted into the United States, have violated the terms of their visa, for example, by overstaying their lawful period of stay, accepting

unauthorized employment, or committing certain criminal offenses. The Immigration and Nationality Act (INA) lays out a long list of grounds for removal that varies significantly based upon whether the noncitizen is subject to inadmissibility or deportability, especially in the criminal context.

The question of whether a certain crime triggers a noncitizen's removal varies tremendously, based upon the nature of the offense, the state exercising jurisdiction, the potential sentence, the actual sentence, and the noncitizen's criminal record. In the immigration context, there are various types of convictions that render a noncitizen removable, however the primary grounds of criminal removal are categorized as crimes involving moral turpitude, aggravated felonies, violations of controlled substance laws, and multiple convictions. A crime involving moral turpitude is an undefined concept in immigration law and requires a case-by-case analysis; burglary has been found to be a crime involving moral turpitude, while breaking and entering has not. Aggravated felonies are defined under the INA and carry severe consequences; however, they are not necessarily always felonies under state law. The determination of whether an offense is properly classified as a crime involving moral turpitude or an aggravated felony is based upon an analysis of the state criminal statute, and not on the underlying conduct involved in the offense.

Based upon the particular conviction, a noncitizen might be subject to removal, mandatory detention pending removal, and in some cases a permanent bar from returning to the United States. In other cases, a conviction might not trigger removal, but will preclude a finding of good moral character, which is essential for various forms of immigration relief, as well as for eligibility for naturalization. Importantly, in the immigration context, a noncitizen can face removal based upon an offense where there is no underlying conviction according to state law, provided that there is some form of sentence ordered by a judge.

This column will cover strategies for minimizing the immigration consequences of criminal activity, and will deal with other areas where immigration law intersects with Florida law, including but not limited to family law with divorce, unaccompanied juveniles and victims of domestic violence, and business and labor law related issues, such as employment authorization and I-9 compliance. In the interim, if you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or evan@evangeorge-law.com.