

Immigration Matters



By Evan George

This column presents the issue of the detention of non-citizens by U.S. immigration enforcement agencies, and the options for a non-citizen's release from such custody. As the number of non-citizens detained during their removal

proceedings rises at a steady pace across the country, the detention of non-citizens is increasingly affecting many local residents and their families.

The Immigration and Nationality Act (INA) provides for mandatory detention of non-citizens with criminal convictions, including aggravated felonies, violations of controlled substance laws, multiple convictions, and in most cases, crimes involving moral turpitude. INA 237(c). The INA also provides that the U.S. Immigration and Customs Enforcement (ICE) may arrest and detain any non-citizen, even if they do not have any criminal record, pending the determination of whether they are removable from the United States. INA § 236(a). For years, the detention of non-citizens was primarily reserved for those with criminal convictions; however, ICE is increasingly arresting and detaining non-citizens without criminal records.

The detention of a non-citizen by ICE is generally initiated one of three ways. First, a non-citizen who has been arrested and is in the custody of local or state authorities will be transferred to ICE custody at the conclusion of the criminal proceedings. ICE does this by putting a "hold" on non-citizens in state or local custody, and it then has 48 hours to take them into custody from the time the non-citizen would have been released. Second, ICE also takes an increasingly large number of non-citizens into custody during immigration raids at worksites (although there is reason to believe that this particular enforcement tactic will change under the Obama administration). Finally, when non-citizens make applications for immigration status or various benefits, they now must submit to security clearances and/or fingerprints, thereby notifying ICE of their presence and potential deportability. Thus, a non-citizen may inadvertently initiate the process of detention and removal when applying for citizenship, renewal of green cards, employment authorization, or even simple status inquiries into their case.

Once ICE has the non-citizen in custody, it generally has up to 48 hours to notify the non-citizen of alleged grounds for removability by way of a charging document known as the "notice to appear." At this point, ICE may release from custody, on bond of at least \$1,500.00, those non-citizens who do not have any criminal convictions, or who have only been convicted of certain minor criminal offenses. For non-citizens in Alachua County, ICE will generally transfer them to a processing facility in Jacksonville, FL, where the initial bond determination is made. If the non-citizen is not released on bond, ICE can transfer them to any detention facility in the country. While most non-citizens from the Alachua County area are transferred to the Krome, Broward, or Glades detention centers in South Florida, others are sent as far as Texas or Arizona, creating obvious difficulties for families and legal representation.

ICE will then file the notice to appear with the Immigration Court having jurisdiction over the area of detention. Non-citizens not subject to mandatory detention may seek a hearing for bond redetermination before the Immigration Court, where they must convince the judge that they are not a flight or safety risk, and, in many cases, that they are eligible for some form of relief from deportation. If bond is denied, the non-citizen will be detained during the pendency of their removal hearings, which can take anywhere from several weeks to over a year.

While non-citizens without lawful status, and legal permanent residents (green card holders) with certain criminal convictions are potentially subject to detention, there are ways to minimize the risk of being taken into ICE custody. Obviously, if possible, avoiding custody by state or local authorities can make a tremendous difference. Similarly, caution should be used when submitting any affirmative request for immigration benefits, including citizenship. Further, for those non-citizens living under a looming threat of detention, taking advance action, such as signing a power of attorney for financial decisions, and resolving child custody issues, can minimize the disruption for family members in the wake of an arrest.

If you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or evan@evangeorge-law.com.