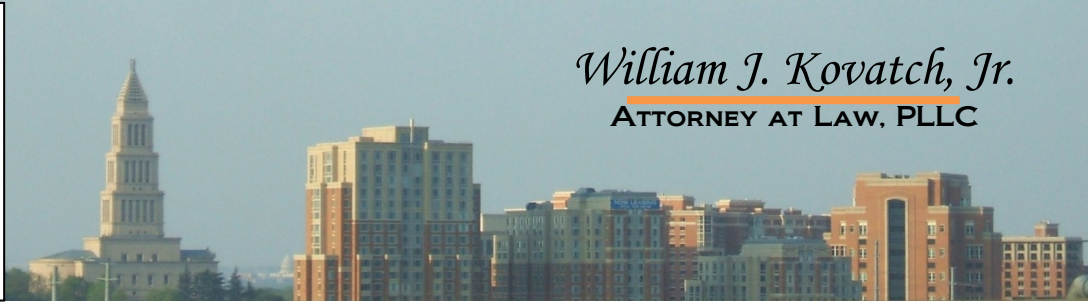


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April 20, 2009

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William J. Kovatch, Jr. is an experienced litigator, with eight years experience litigating cases for the Federal Government. He has litigated complex cases before U.S. courts, NAFTA panels, and the World Trade Organization.

William J. Kovatch, Jr. is a member of the American Immigration Lawyers Association.

This newsletter is meant for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.

IMMIGRATION LAW NEWSLETTER

President Obama To Pursue Comprehensive Immigration Reform

The New York Times reports that President Obama plans to tackle comprehensive immigration reform in his first year in office. According to Cecilia Muñoz, a Deputy Assistant to the President and Director of Intergovernmental Affairs in the White House, the Obama Administration's proposal will include a path to legalization for aliens currently in the United States without status.

The President is scheduled to speak on the issue in May, and convene members of both parties to discuss the legislation over the summer. A bill is expected to be introduced to Congress in early fall of 2009.

Two major labor organizations, the AFL-CIO and Change to Win, announced their support for comprehensive immigration reform, including a path to citizenship for undocumented workers.

However, even with the support of labor organizations, the legislation may prove to be a difficult sell to Congress. With the economy in recession, many think that this is the wrong time to address immigration reform. Even some of the President's supporters believe that immigration reform may detract from the President's domestic agenda, which includes economic stimulus and health care reform. ■



Unexpected Consequences of Criminal Proceedings for Non-Citizens

Being charged with a crime is a serious matter – but when a non-citizen, including a lawful permanent resident, is involved in criminal proceedings, it can have some unexpected and serious consequences on their immigration status. While certain legal strategies work well for citizen criminal defendants, some of those same strategies, including

requests for bail and plea bargains, can be very problematic for a non-citizen. This is why even an experienced criminal lawyer, without a clear understanding of immigration issues, can create greater complications for their non-citizen client.

Requesting Bail

Most criminal defendants would prefer being released on bail rather than stay in jail to await trial. However, when the defendant is a non-citizen, you may need to consider that option carefully. Police departments may report the arrest of a non-citizen to U.S. Immigration and Customs Enforcement (“ICE”). ICE may then put what is called a “detainer” on the defendant. That means that the police will be required to hold the defendant, even after making bail, until ICE decides whether to take the defendant into custody. By law, the police can only hold the defendant for 48 hours before ICE takes custody; however, in practice, the police will typically hold the defendant until ICE can actually take custody. Therefore, even if a defendant has posted bail, he may not be released if ICE chooses to take custody.

If ICE does take custody, the agency may take any number of actions. ICE could release the defendant on their own recognizance. It could also set an additional bond for the defendant’s release on top of the bail required for release from local law enforcement; however, in some cases, the agency may not set bond unless the defendant arranges to have legal representation. Finally, ICE could choose to detain the defendant – which can severely complicate matters for the non-citizen. If ICE chooses to detain the defendant, the agency can transfer the defendant to another facility, often hundreds of miles away. This can make a defendant’s participation in his or her defense difficult, as a defendant in ICE custody may not always be made available to attend his or her own criminal trial in the local jurisdiction. Moreover, if ICE chooses to detain a defendant because there is an outstanding removal order, ICE may begin the process of removing the defendant. As a result, the defendant could be out of the country by time the criminal charge is ready to be heard in court.

Plea Bargains

While many defendants may choose to defend themselves in the course of a trial, in some cases, a criminal defense attorney may advise their client to pursue a plea bargain with the jurisdiction’s district attorney. For example, assault and battery is a class 1 misdemeanor in the state of Virginia, and is punishable by up to one year in jail. However, in certain circumstances, the district attorney may offer or accept an agreement to reduce the sentence to a criminal fine and time already served in jail. However, if a non-citizen defendant has been charged with a crime involving moral turpitude, a plea bargain may not be in their best interest. According to recent guidance from the U.S. Attorney General, an Immigration Judge may look at a non-citizen’s record of criminal convictions, including the criminal complaint and any plea bargains, in order to determine if the facts that were pled would constitute a crime involving moral turpitude. If so, an Immigration Judge may use those facts as a basis for the non-citizen’s removal.

Because of these considerations, criminal defense lawyers who represent non-citizen defendants would be well-advised either to retain an immigration lawyer for assistance, or to become better acquainted with U.S. immigration law. ■