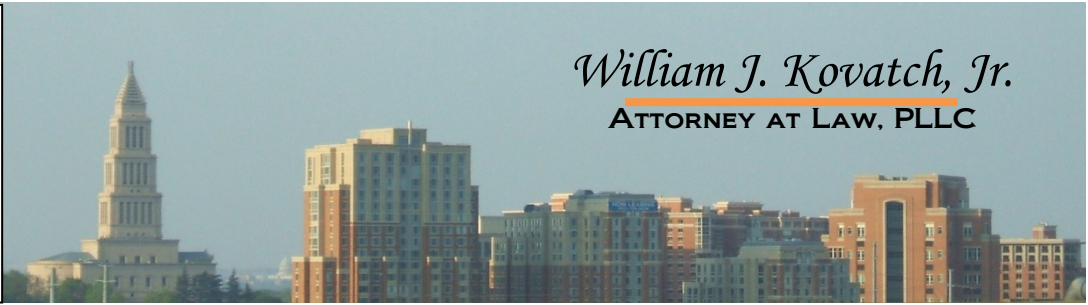


**CALL FOR AN
APPOINTMENT**

(703) 837-8832

717 King Street
Suite 205
Alexandria, VA 22314

William J. Kovatch, Jr.
ATTORNEY AT LAW, PLLC



May 25, 2009

William J. Kovatch, Jr.,
Attorney at Law, PLLC
provides a wide array of
legal services.

- Family Based Visas
 - Immediate Relatives
 - Spouse/Fiancé
 - Preference System
- Employment Visas
 - Immigrant Visas
 - Non-Immigrant Visas
- Naturalization
- Asylum
- Removal/Deportation

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

Supreme Court Limits the Ability of the Government to Use Aggravated Identity Theft Laws Against Undocumented Workers

In a recent decision, the United States Supreme Court issued an opinion that curtails the ability of the Government to use federal aggravated identity theft laws against undocumented workers.

After federal law enforcement agencies conducted workforce raids on suspected undocumented workers, any alien who had used a Social Security number that in fact belonged to another person would be charged with aggravated identity theft. By securing such a conviction, the Government could ensure not only that the aliens were removed from the United States, but also prevent the alien from returning to the United States because of their criminal conviction.

In Flores-Figueroa v. United States, Ct. No 8-108, Slip Op. (U.S. May 4, 2009), the defendant was an immigrant alien who had given his employer a bogus Social Security number in order to work. However, the Social Security number he had provided was a valid number belonging to another individual. The Government arrested the defendant and charged him with aggravated identity theft. While the alien argued that he did not know that the Social Security number belonged to another person, the District Court found this an insufficient defense, and convicted the alien.

In a unanimous opinion, the U.S. Supreme Court overturned the conviction. The Court noted that aggravated identity theft occurs when a person “knowingly . . . uses, without lawful authority, *a means of identification of another person.*” 18 U. S. C. §1028A(a)(1) (emphasis added). Therefore, in order to be convicted of aggravated identify theft, the defendant must have known that the means of identification (in this case, the Social Security number) belonged to another person.



Pursuant to the Supreme Court’s decision, simply using a Social Security number that happens to belong to another person is not enough to sustain a conviction of

aggravated identity theft. Rather, the Government would have to prove that the alien knew that the Social Security number belonged to someone else. This will make it more difficult for the Government to use federal identity theft laws to prosecute undocumented arrested in a workforce raid.■

Mandatory Detention Creates Harsh Results for Non-Citizens

For an alien caught in removal proceedings, the law can be harsh. For example, the Immigration and Nationality Act provides that aliens who have committed certain crimes must be detained while their removal proceeding is pending. This is called mandatory detention. The U.S. Government's rationale is to ensure that aliens do not escape during removal proceedings and avoid removal from the United States.

Mandatory detention applies to all aliens in removal proceedings. That can include aliens who entered without inspection, aliens who overstayed a visa, aliens in the United States temporarily who commit a crime, and even permanent residents. As a result, this provision of the law is not limited to those traditionally considered "illegal aliens" – it can have a broad-reaching affect to any non-citizen present in the United States.

In practice, mandatory detention creates a number of inequities. First, mandatory detention can arguably punish a non-citizen twice for a single crime. Consider the example of an alien who has been convicted twice of assault and battery and has served six months in a state prison for the convictions. The alien may be released from state custody, and think that he has served his time. However, U.S. Immigration and Customs Enforcement may decide that the assault and battery could be a crime involving moral turpitude, and could arrest the alien after his release from state prison, charging him with a violation of immigration law. If the Immigration Court agrees that the assault and battery convictions are crimes involving moral turpitude, the alien will be subject to mandatory detention. The alien could then find himself "detained" for months awaiting the results of the removal proceedings. For all intents and purposes, the alien is serving more jail time for the same conviction.

Second, mandatory detention fails to consider whether there is any relief available to the alien under immigration law. An alien who violated immigration law may still be eligible to seek a benefit under immigration law that would permit the alien to stay in the United States. If an alien is married to a U.S. citizen, for example, under certain circumstances, the alien may be able to apply for a visa as an "immediate relative," apply for adjustment of status to a permanent resident and apply for a waiver of the criminal convictions. All of these applications to the U.S. Government could take six months or more to process. During that time, the alien would still be subject to mandatory detention until those applications have been reviewed and ruled on. The availability of the immigration relief should be enough to ensure that the alien will attend the immigration hearings. However, the statute does not permit an immigration judge to take the availability of relief under immigration law into consideration when mandatory detention applies. Thus, the alien is stuck in jail, waiting for months until the immigration judge can rule on his applications for immigration benefits.■