

# When Good Students Go Bad

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# What Will I Learn?

- Consequences of criminal conduct
- Concepts of inadmissibility and removability
- Criminal procedure after arrest
- Consequences of failure to maintain status/  
overstay
- DSO reporting requirements for criminal  
conduct

# Common Offenses on Campus

- Domestic violence
- Stalking
- DUI
- Public intoxication
- Battery, assault
- Drug offenses
- Sexual offenses
- Theft/shoplifting
- Arrest for unpaid traffic tickets

# Concept of Inadmissibility

- Foreign nationals are *inadmissible* to the US because they have characteristics or have engaged in conduct which Congress has deemed undesirable. Inadmissible aliens often cannot get visas, enter the US, or reenter after leaving, absent a waiver of inadmissibility.
- See Immigration and Nationality Act Sec. 212 (a) –classes of inadmissible aliens.

# Concept of Removability

- Foreign nationals become ***removable*** from the US, if, after entry, they exhibit characteristics or engage in behavior which Congress considers undesirable.
- Removal grounds are quite a bit narrower than grounds of inadmissibility: Should be harder to remove persons who have arrived and established roots, than those persons outside the US trying to enter.
- Removal grounds: INA Sec. 237(a).

# What Criminal Conduct Has Immigration Consequences?

- Congress began to bar persons who engaged in certain types of criminal conduct beginning in early 19<sup>th</sup> century (eg prostitutes).
- Classes of barred criminals have steadily expanded.
- IIRAIRA (1996) significantly expanded types of criminal conduct considered particularly heinous.

# Overview: What Criminal Activity Has Immigration Consequences?

- Admission of, or conviction for, crime or crimes involving moral turpitude (CIMT)
- Conviction of 2 or more crimes; aggregate sentence 5 yrs or more
- Conviction of domestically related crimes
- Conviction of aggravated felony (particularly heinous crimes).
- Admission of, or conviction of drug-related offenses

# Overview: Criminal Activities With Immigration Consequences

- Drug-related activities not resulting in conviction (drug trafficking and drug/alcohol abuse)
- Security-related offenses, whether or not resulting in conviction (espionage, sabotage, terrorist activity)
- Prostitution activities, whether or not convicted



# Domestic Offenses With (Very) Negative Consequences

- Spousal abuse (or abuse of anyone in position of spouse)
- Child abuse, neglect or abandonment
- Stalking
- Violation of protective order
- Simple battery, assault if committed in domestic context
- Many of these offenses can be misdemeanors with minimal punishment, but result in removal with little or no relief available.

## All Arrests

- Must be admitted in all immigration contexts and on all applications where question is asked. “Expungement” of arrest is *irrelevant*.
- All arrests will generate an NCIC “hit” (National Crime Information Center) which may delay visa issuance, be a problem at the port of entry, or delay approval of other immigration applications.

# What is an Arrest?

- Generally, any restraint on a person's liberty by a law enforcement officer. Usually followed by criminal charge.
- Persons will often not understand that they have been arrested. Questions to ask:
  - Have you ever had an encounter with law enforcement?
  - Have you ever been taken to a police station against your will or been asked to follow an officer to a station?
  - Have you ever been fingerprinted by anyone?

# Arrests with Consequences

- DUI
- Drug trafficking, even if no conviction
- Prostitution, even if no conviction

# Possible Consequences Of Criminal Activity

- Inadmissibility
- Removability (“deportability”)
- Violation of status (if removable as a result)
- Ineligibility for visas, adjustment of status and other immigration benefits

# What is a “Conviction”?

- *Immigration law* defines conviction as
  - a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
    - a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
    - the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
  - Generally expungements of convictions and arrests, and most pardons, have no effect on a conviction in the immigration context.

## “Convicted”?

- Many times a person will not understand that he or she has a “conviction” particularly after a diversionary program, fine with no jail time, or expungement.
- Convictions, even misdemeanors, can have particularly negative consequences when attempting to get a visa or reenter the US.

# Who Gets Involved in a Criminal Case?

- Local/state police, courts, judges, district attorney, prosecutor, US Attorney
- ICE
  - SEVP
  - Investigations
  - Detention and Removal
- CBP
- DOS
- FBI
- DEA, NSA, ATF, other agencies



# Mechanics Of An Arrest

- Probable cause to believe a crime has been committed or is in progress
- Physical restraint
- Miranda warning
- Placed in a detention facility
  - How long? Criminal Bond?
- Appearance before a Criminal Court Judge
- Possible ICE hold, which often will prevent bond in criminal case

# Special Considerations For Foreign Students

- Will the police notify ICE of the arrest?
- Will immigration status affect bond (illegal or temporary = higher)?
- Can a non LPR/non USC post bond (immigration or criminal)?
- Will police/judge advise as to immigration consequences?
- Will the criminal attorney advise of immigration consequences/seek to avoid them?

# From Arrest to Charge

- An arrest does not equate to being charged with a crime.
- There is a formal charging process (indictment, bill of information/particulars): details what law has been violated.
- Many people are arrested, then released without being charged.
- Still have to admit arrest in ALL immigration contexts.

# Charge To Outcome

- Dismissal or “nolle prosequi”- no conviction
- Withheld adjudication or diversionary program— possible conviction under INA
- Plea—”guilty” or “not guilty.”
- Trial, if plead “not guilty”. Can be either by judge or jury.

# Students' Rights In The Criminal Process

- Rights are not dependant on immigration status, but outcomes can have negative effects on non citizens.
- Right to remain silent.
- Right to an attorney if jail is a possibility– public defender.
- Right to examine witnesses/ evidence.
- May or may not be advised of immigration consequences of criminal conviction—only a few states require.
- Usually not be advised that guilty plea/diversion count as conviction for immigration purposes; most criminal attorneys/judges do not understand that it does.

# Right To A Phone Call?

- In the arrest process accused should be given a phone call.
- Collect call – usually cannot be to a cell phone.
- After the one call – most jails have a phone card system.
- To receive calls from jail/ detention facility may have to be pre-authorized by a phone company.

# Once There Is A Conviction, What Happens?

- Not serious enough for ICE to pick up.
- Serious Crime
  - ICE Hold
  - ICE Custody
- Even though conviction not serious enough to cause immigration consequences, must **STILL** be admitted in all immigration contexts.
  - NCIC, FBI Database, etc

# ICE Hold

- An ICE “hold” on a foreign national prevents the criminal detaining authority from releasing alien for a certain period of time after criminal proceedings are concluded.
- Also may prevent bond during criminal proceedings, and/or prevent amelioration of conditions of confinement (eg, halfway house) while serving the criminal sentence.
- After criminal proceedings are completed/sentence served, ICE must pick up within 72 hours or alien is released.



# ICE Custody

- May be eligible for immigration bond
  - ICE can give bond
  - Bond (or determination of no bond) may be reviewed by an Immigration Judge
- ICE may pressure student to take voluntary departure or to waive rights to removal proceeding
- Student has option to have Immigration Judge review removability from the United States
  - Will be given a Notice to Appear, usually no court date stated.
  - Will be followed by notice of court date.
  - If student does not show up will be ordered deported in absentia.

# Where Else Does The Issue Of Criminal Conduct Arise?

- At the Consulate
  - Yates Memo, Requesting Medical Re-examination, 1/16/2004: Single DUI conviction in past 3 years or more than one conviction anytime, or any other conviction for alcohol or drug-related offenses, have to go for physical with panel physician which may mean visa denial
  - DOS Memo about how to implement June 2007, R 072132Z (CLASS hit; may be ineligible under 212(a)(1)(A)(iii)- physical or mental disorder posing threat)
  - Any prior drug use means 3 year inadmissibility
  - Visa issuance delays because of hit: consul MUST wait for response from FBI. Student should take court certified records to visa appt.

# When Else Does The Issue Of Criminal Conduct Arise?

- At the Port of Entry
  - Officer can ask questions and will often go fishing for confessions of “other” crimes
  - May send student to secondary inspection. No right to an attorney
  - May give the student deferred inspection
  - If serious enough, will refuse entry or take student into custody. Will be classified as an arriving alien—fewer rights.
- Should always travel with certified copies of court records.

# What Crimes Do DSOs Have To Report?

- 8 CFR 214.3 (g)(2)(ii)(D): Required to report any disciplinary action taken by the school against the student ***as a result of conviction of a crime***. Note: this reporting requirement is very narrow.
- If an international student commits a crime and it is headline news, is the PDSO/DSO required to report the student to SEVIS?

# Helping To Prevent Criminal Conduct

- Make students aware of types of illegal conduct —many are legal in their countries.
- Know your state and local laws that can be pitfalls for your students (underage drinking rules, DUI checkpoints)
- Know the culture of the law enforcement officials (party patrols)
- Provide information about alternative activities and means of transportation

# How Do International Student Advisers Advise Students?

- At orientation
  - It's nice to have a visit from a campus police officer
  - Explaining that an MIP or fake I.D. offence has different consequences for an international student than it might for their U.S. citizen roommate is a good idea
  - Recommend the student find both a criminal and an immigration attorney if the student is accused of committing a crime
- Put information in the student handbook
- Provide handouts
- It is a good idea to have a release form signed, particularly for sponsored students

# Releasing Information: FERPA

- Family Educational Rights and Privacy Act protects “students” from having educational records disclosed.
- Also applies to international students, but is superseded by SEVIS reporting: 8 CFR 214.3(g)(1) – DSO must furnish records to DHS upon request.
- FERPA Regulations - 34 CFR 99

# Exceptions To FERPA For All Students (Disclosure Allowed)

- To internal school officials
- To school where student seeks admission
- In connection to financial aid
- To organizations conducting studies on behalf of educational institutions
- To accrediting agencies



# Exceptions To FERPA For All Students (Disclosure Allowed)

- To parents of a student under 18, or over 18 if student gives consent
- To comply with judicial order or subpoena
- In health and safety emergencies
- “Directory Information”
- To a victim of a crime of violence
- To DHS in compliance with 214/3(g)(1).

# When DHS Requests Information

- SEVIS required data exception found in IIRIRA 641(c)(2) “FERPA. The Family Educational Rights and Privacy Act of 1974 [20 U.S.C. 1232g] shall not apply to aliens described in subsection (a) of this section to the extent that the Attorney General determines necessary to carry out the program under subsection (a) of this section”.
- This is not a “blanket” abrogation of FERPA.
- Only those data elements DHS decides to include in 8 CFR 214.3(g)(1) are exempted from FERPA.
- In order to include new data elements, DHS must undertake a formal rulemaking in the Federal Register.
- DHS officials may not ask for info not included in the reg ad hoc or on the spot.

# When DHS Requests Information

- Request for info on individual student: 3 work days to respond
- Information on a class of students: 10 days
- Information on a student in custody: same day response, and orally
- 8 CFR 214.3(g)(1)

# What To Do When ICE Shows Up?

- Don't panic.
- Ask for ID and ask for requests to be put in writing.
- Remember FERPA: cannot release non public info regarding students except in certain circumstances: refer to regulation!
- Remember the FBI is not the same as DHS, they must have a subpoena or ask ICE to make the request. 214.3(g) info may only be released to DHS.

# Reasons To Terminate SEVIS Records

- Unauthorized withdrawal
- Death
- Unauthorized employment
- Unauthorized drop below full course of study
- Authorized drop below full course of study time exceeded
- Change of nonimmigrant classification
- Change of nonimmigrant classification denied
- Expulsions
- Suspension
- Absent country for five months
- Failure to enroll
- Costs exceed resources
- Transfer student no show
- Denied transfer
- Extension denied
- Otherwise failing to maintain status
- Violation of change of status requirements
- Change of status denied
- Change of status withdrawn
- Change of status approved
- Transfer withdrawn
- No Show – manual termination
- Authorized early withdrawal
- No Show – system termination
- School withdrawn

# Reporting Termination Events

- 8 CFR 214.3(g)(3): SEVIS Reporting Requirements
  - Event-based reporting (21 days of the occurrence)
  - Periodic Reporting (30 days after the deadline for registering for classes)

# Reporting Termination Events

- Institutional Policy Question
  - Does the PDSO or DSO terminate immediately upon constructive knowledge of an event? Why?
  - Does the PDSO or DSO wait the full 21 days or 30 days to report the termination? Why?

# Advising A Terminated Or Soon To Be Terminated Student

- Try to get the student to come in as soon as possible for advising
- Advise on grace periods: no grace period or a 15-day grace period
- Advise on regaining F1 status: exit/re-entry or reinstatement
- Advise on immigration consequences: get a lawyer?
- Does the school request removal of the CEU flag?
- DHS Trip: [http://www.dhs.gov/xtrvlsec/programs/gc\\_1169676919316.shtm](http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm)



# Effects Of SEVIS Termination

- Real Time DHS notification
- CEU evaluates the record and determines enforcement priority.
- May not do anything at all, but.....
- We recently had a student who was terminated in SEVIS and picked up by immigration less than 6 hours after termination.

# What Happens To A Terminated Student?

- Certain profiles are almost always taken into custody. ICE will almost always determine that the student is not eligible for bond.
- Student can request bond redetermination by a judge, but it may take a few weeks to get the hearing.
- DHS may pressure/ encourage voluntary return.

# What Happens To A Terminated Student?

- Student has option to have removability reviewed by an Immigration Judge – removal proceedings.
- Reinstatement can be a valid defense to removal – BUT student is racing the removal clock and the docket of the Court
- Student cannot leave before resolution of removal proceedings or may face in absentia removal order

## If A Student Is Picked Up...

- Know your local jail
- Know a local criminal bondsman
- Know an immigration bondsman (they are rare and bond terms are onerous).
- Know a GOOD criminal attorney who is aware of immigration consequences of criminal conduct.

# If A Student Is Picked Up....

- Know a GOOD immigration attorney who has experience with students AND criminal cases.
- Students should get in touch with an attorney as soon as possible.
- Get the A# as soon as possible
  - Date of Birth, Name and Nationality can work in a pinch
- Students should be careful what they sign!!!!
- Be aware that law enforcement/ ICE will not always release information to you: may need student's authorization. Helps to have authorization in advance so it can be faxed quickly.

# ICE – Detention And Removal Contacts/Facilities

- Detention & Removal -  
<http://www.ice.gov/about/dro/contact.htm>
- Federal Detention Facilities -  
<http://www.bop.gov/DataSource/execute/dsFacilityLoc>

# If The Student Is Lucky Enough To Avoid ICE....

- Expect difficulty traveling: “reinstatement” interview at CBP.
- Will have to pay new SEVIS fee if not reinstated.
- If obtaining a new visa, will have to disclose prior violations which could affect issuance of a new visa; consul will see terminated record and reasons.

# REFERENCES

- Federal Laws and Regulations:
  - INA 212(a) (grounds of inadmissibility)
  - INA 237(a) (grounds of removability);
  - 8 C.F.R. 214.3(g)(1) (DHS exception to FERPA)
  - 34 CFR 99 (FERPA regulations)
- NAFSA Adviser's Manual



# When Good Students Go Bad

- Questions?

