

When Good Students Go Bad

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Who are we dealing with?

- ICE
 - Investigations
 - Detention and Removal
- CBP
- DOS
- Local police/ courts/ judges/ district atty.

Mechanics of an Arrest

- Miranda warnings
- Taken into custody
 - How long? Bond?
- Appearance before a Judge

Special Considerations for foreign students

- Will the police notify ICE of the arrest?
- Will immigration status affect bond?
- Will police/judge advise as to immigration consequences?

Arrest to a Charge

- An arrest does not equate to being charged with a crime
- There is a formal charging process (indictment, bill of particulars)
- Details what law has been violated

Charge to ????

- Dismissal or nolle pros.
- Withheld adjudication
- Plea
- Trial

Conviction

- Immigration law defines convictions 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.

Student's rights in the criminal process

- Rights are not dependant on immigration status
- Right to remain silent
- Right to an attorney – public defender
- Right to examine witnesses/ evidence
- May not or may not be advised of immigration consequences of criminal conviction. May or may not be advised that plea/ adjudication counts as conviction for immigration.

Right to a phone call?

- In the arrest process 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.....

- Not serious enough for ICE to pick-up OR no conviction
 - NCIC, FBI Database, etc.
- Serious crime
 - ICE Custody
 - ICE hold

In ICE Custody

- May be eligible for bond
 - ICE can give bond
 - Bond (or determination of no bond) may be reviewed by an Immigration Judge
- ICE will pressure student to take voluntary removal
- Student has option to have Immigration Judge review removability from the United States
 - Will be given a Notice to Appear

Other than removal, when does the issue arise?

- Application to change or extend status
 - The New I-539
- Application to adjust status to permanent residence
- Application for citizenship
- Arrests/ Convictions NEVER disappear for immigration purposes. There is no such thing as “expunge” or “erase”.

Other than removal, when does the issue arise?

- At the Embassy
 - DUI memo
 - Security delays
- Should travel with certified copies of court records

Other than removal, when does the issue arise?

- At the Port of Entry
 - Officer can ask questions and will often ask in-depth questions 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.

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 will 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

If the student is lucky enough to avoid ICE....

- Expect difficulty traveling
- May have to pay new SEVIS fee
- Not eligible for automatic visa revalidation
 - (travel to Canada/ Mexico < 30 days).
- If obtaining a new visa, will have to disclose prior violations which could affect issuance of a new visa.

Advice

- Know your local jail
- Know a local bondsman
- Know an immigration bondsman
- Know a GOOD criminal attorney
- Know a GOOD immigration attorney
- Students should get in touch with an immigration attorney as possible

Advice

- 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 PROACTIVE

Who can you call

- Jacksonville ICE
 - (904) 232-3156
- Miami ICE
 - (305) 762-3350 (305) 400-6160
- Tampa ICE
 - (813) 357-7000

Who can you call

- Detention and Removal
- 7880 Biscayne Blvd.
- Miami, FL 33138
- Phone: 305-762-3622

Who can you call

- Miami CBP (305) 810-5120
- Tampa CBP (813) 228-2381