

Why should I be concerned with removal proceedings?

Tales from the Arena



CHARLES MEDINA, ESQ.

IN 2010, the Department of Homeland Security (DHS) removed 387,242 aliens from the US. In 2009, DHS removed 395,165. In 2008, it removed 359,795. These numbers, which were reported in DHS's 2010 Annual Report, show aggressive and sustained enforcement activities. Trends show that from 2001 up to 2010, the number of removals has almost doubled. By most indications, we are likely to witness more removals in the foreseeable future. Removal is no longer a remote possibility that happened to other people. It is something that could happen to you or to someone you know.

While removable proceedings are not inevitable, it's better to have an understanding of the process in order to avoid panic when removal proceedings do happen. Better yet, understanding why proceedings are even initiated could help us avoid situations that lead to removal proceedings.

DHS defines removal as the compulsory and confirmed movement of an inadmissible or deportable alien out of the US based on an order of removal. Deportation is the popular term used for removal but, technically, deportation refers to the old process of removing an alien who was already in the US as opposed to exclusion, which was the process for removing someone who was trying to enter the US. The old system where deportation and exclusion were separate proceedings no longer exists. In its place is one unified removal process called removal proceedings. So removal, not deportation, is the more accurate term.

DHS initiates removal proceedings by issuing a notice to appear (NTA). The NTA alleges the facts that make an alien removable and cites the legal basis for removal. DHS issues NTAs under various circumstances. For example, DHS may issue an NTA after it denies a green card application for an alien who does not qualify for a green card. DHS also issues an NTA after an alien is released from prison after serving time for a criminal offense which is a ground for removal. DHS may even issue an NTA to a returning green card holder if it discovers an old criminal conviction during the inspection process at the airport. An encounter with the police during a routine traffic stop could also lead to an NTA if it comes to DHS's attention that such individual is undocumented or has violated his immigration status. A raid at a factory or a restaurant where undocumented aliens are suspected of working could also lead to NTAs for those who are caught in the process.

DHS's Annual Report shows that in 2010, out of the 387,242 aliens removed, 168,532 aliens were removed due to criminal convictions. Drug convictions were the leading cause of removal for criminal aliens. DHS removed 42,692 drug convicts. However, theft offenses, domestic violence, and assault were also common. In the same year, DHS issued 223,217 NTAs to criminal aliens who were identified through DHS's Criminal Alien Program.

What these numbers show is that a criminal conviction is the easiest way to end up in removal proceedings. About 43 percent of all aliens removed in 2010 were removed due to criminal convictions. With the continuing emphasis on immigration enforcement targeting criminal aliens, these numbers would likely continue

to rise. If these statistics do not bother most people in the immigrant community who consider themselves law-abiding members, think again. It's easy to get the impression that only hardcore criminals end up in removal proceedings. However, drug convictions are not necessarily limited to drug dealers or traffickers. DHS's Annual Report did not provide a breakdown of the drug offenses of removed criminal aliens but drug convictions include the sale of drugs as well as mere possession. One could be removed for being a ruthless drug dealer responsible for the destruction of many lives. But one could also be removed for mere possession of even small quantities of cocaine for personal indulgence in a moment of weakness. The law is harsh on both sellers and users of drugs.

Thus, if you have a drug arrest or conviction, you would be well advised to consult an immigration attorney especially before you enter a plea. A seemingly harmless shoplifting offense for a minor item could also trigger removal proceedings. Even a domestic argument that escalates into mild violence could lead to removal. While professional criminals among immigrants might be rare, curious drug users, absent-minded shoplifters or enraged spouses might be more common. If you find yourself in these situations, talk to an attorney before filing an immigration application or traveling abroad.

Charles Medina practices immigration law. Visit his website at medinalawgroup.net for more details. This article provides general information only and does not provide legal advice on any specific matter or predict the outcome of any legal matter. It does not invite or create an attorney-client relationship.

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