



CONNECTICUT CHAPTER

RE: H.B. No. 5544 (RAISED) *AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO MISDEMEANOR SENTENCES*

Recommended Committee Action: SUPPORT THE BILL

The American Immigration Lawyers Association (AILA) is a nonpartisan, not-for-profit organization that provides continuing legal education, information, professional services, and expertise through its 36 chapters and over 50 national committees. It is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.

The Connecticut Chapter of AILA supports H.B. No. 5544, which seeks to provide that a person sentenced to a term of imprisonment of up to but not exceeding one year under Connecticut law, shall be punishable by imprisonment for a period not to exceed three hundred sixty-four days. This bill would provide certainty to many Connecticut residents, and their attorneys, convicted of misdemeanors as to whether they will be deported and permanently barred from returning to the United States.

Under U.S. immigration law, Lawful Permanent Residents may live, work and raise their families in this country for their entire lives. However, they can be, and are, deported from the United States for conviction of crimes that constitute “aggravated felonies” under the Immigration and Nationality Act. Under current law, a conviction does not have to be for a felony or be aggravated in order to fall within that definition.

But, the immigration consequences of an aggravated felony conviction are dire. It means that, with few exceptions, the lawful permanent resident will be deported and that he or she will never be able to return to this country. The person’s long residence in Connecticut, their work history, and their family and community ties are simply not considered.

People charged with convictions of aggravated felonies are mandatorily detained for the duration of their removal proceedings. In Connecticut, they are detained in Massachusetts, far from their families and attorneys. People found to be aggravated felons are not eligible for most forms of relief from deportation including asylum and cancellation of removal. They are rarely eligible for withholding of removal. The only relief available, regardless of the criminal record, is deferral of removal under the U.N. Convention of Torture which requires that the resident show that he or she will be tortured in the country of citizenship. A person deported for an aggravated felony is permanently barred from returning to the United States, unless the Attorney General consents. 8 U.S.C. § 1182(a)(9)(A).

Many convictions are “aggravated felonies” only if the “term of imprisonment” imposed is for “at least one year.” The Immigration and Nationality Act provides that a lawful permanent resident is deportable for conviction of an aggravated felony at any time after admission into the United States. 8 U.S.C. § 1227(a)(2)(iii). In 1988, Congress designated specific offenses as aggravated felonies for immigration purposes. The only crimes designated at the time were murder, drug trafficking, and illegal trafficking in firearms or destructive devices. Over the years, many additional crimes have been added to this category; it now includes twenty-one subsections, many of which encompass multiple offenses. 8 U.S.C. § 1101(a)(43).

Several subsections are broad and capture crimes that are misdemeanors under state law. For example, an aggravated felony includes “any crime of theft (including the receipt of stolen property) or burglary for which the term of imprisonment is at least one year.” 8 U.S.C. § 1101(a)(43)(G). The Second Circuit Court of Appeals has held that Connecticut Larceny is categorically a “theft offense.” *Abimbola v. Ashcroft*, 378 F.3d 173 (2d Cir. 2004); *Almeida v. Holder*, 588 F.3d 778, 785-789 (2d Cir. 2009). Thus, convictions for Larceny in the Fourth Degree (a Class A Misdemeanor), Larceny in the Fifth Degree (a Class B misdemeanor), and Larceny in the Sixth Degree (a Class C misdemeanor) under Connecticut law are all “theft offenses.” People convicted of shoplifting can be charged with deportability for an aggravated felony.

Another broad subsection is “a crime of violence.” 8 U.S.C. § 1101(a)(43)(F). It has been held to include crimes involving substantial risk of physical harm. But, the case law defining the scope of “crime of violence,” and which state statutes are categorically aggravated felonies, continues to be the subject of litigation before the immigration courts, the federal circuit courts, and the U.S. Supreme Court. The scope of “theft offense” is also constantly the subject of litigation. This fluidness makes it very difficult for lawful permanent residents, and their attorneys, to predict whether a particular offense is or will become an aggravated felony.

Because both of these subsections also require that the “term of imprisonment be at least one year,” passage of Raised Bill No. 5544 would alleviate much of that uncertainty, by providing that misdemeanor sentences of one year may not exceed 364 days. “Term of imprisonment” is defined as the term sentenced by the criminal court, regardless of whether the sentence is suspended, or the person actually serves less time. 8 U.S.C. § 1101(a)(48)(b). The Board of Immigration Appeals continues to hold that “one year” as used in the federal statute means 365 days. *See Matter of Song*, 23 I&N Dec. 173 (BIA 2001).

Thus, by providing that a misdemeanor sentence cannot exceed 364 days, Raised Bill 5544 will provide more clarity for lawful permanent residents, and their attorneys, as to whether their misdemeanor convictions are aggravated felonies.

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