

Immigration Matters: Somali Immigrants Getting Bad Legal Advice

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New America Media, News report, Joel Grostephan, Posted: Sep 01, 2008 [Share / Save](#)

Editor's Note: In Minnesota, a guilty plea from someone who is not a U.S. citizen could land that person in deportation proceedings, even if that person has just committed an infraction. This is what is happening to a number of Somali residents in that state, who don't always get a smart lawyer to defend them, writes NAM contributor Joel Grostephan.

ST. PAUL, Minn. -- Streetwise immigrants know that a felony conviction could put their immigration status in jeopardy. But in Minnesota, even a misdemeanor could get a non-citizen deported. If you plead guilty, nobody has to explain the consequences.

That worries Saeed Fahia, director of the Confederation of Somali Communities, a nonprofit in Minneapolis.

"You could be deported for a gross misdemeanor, like a fight with your wife," Fahia says, recalling the case of a man who came to him for help after signing a plea agreement – that is, admitting to a lesser crime than the original charge. Fahia says, "The prosecutor said, 'We'll let you go if you confess to something, and accept the assault charge.' The man did, but now, Fahia says, he could be deported even after his wife has denied that her husband hit her.

Somali immigrants, who number over 30,000 in Minnesota, arrived as refugees in the United States. The majority now has permanent legal status, or green cards. Even so, they could be deported for a variety of infractions, simply because they are not citizens.

"Many people in the U.S. don't know that we deport refugees," says John Keller, director of the Immigrant Law Center of Minnesota, adding: "It's unconscionable to return them back to the place we gave them refuge from," he says.

A patchwork of other states including California, Ohio, and Vermont mandate that the court explain the immigration consequences of a guilty plea, but Minnesota is not one of them.

"If you are not advised about your plea, nobody is going to be punished for not giving you that information," says Leonardo Castro, chief public defender in Hennepin County, which includes Minneapolis.

Castro says his attorneys have trained in immigration law for years, but "some lawyers are better than others" about informing clients of immigration consequences.

Take the case of Mohamed Ali. He's a 21-year-old Somali immigrant, who got arrested for breaking into a restaurant in early June. He's looking for help finding a private defense attorney from community organizations because he's charged with second-degree burglary, a felony.

Ali admits that he was involved in the burglary, but he says the charge doesn't fit the crime. He says he and a friend walked into a Jimmy John's that was already broken into, and Ali grabbed a stash of receipts thinking they were cash and stuck them in his pocket. Roseville Police chased him and his friend down with a dog. Ali pulled up his pant leg to show off scars on his ankles and behind his knees, the result of dog bites.

Ali admits he made a mistake, but he believes he should get a second chance because his record is relatively good – he has a pending misdemeanor assault charge from an earlier fight in a neighboring county. He said he's trying to make something of his life. "I have never been in trouble - this is my first crime, but the attorneys don't ask me about my past," he says.

Ali says he worked his way through high school and graduated with good grades. Since then, he's



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held odd jobs, even as he began attending community college. But with his green card taken away by law officials, finding steady work has been difficult.

Ali arrived in the United States when he was 13. His older sister was a citizen here. She sponsored him and a dozen brothers and sisters. Ali says he barely remembers what life was like in Somalia. He has no idea of what he would do if he were sent back.

Ali's attorney, a public defender in St. Paul, advised him to sign a plea agreement for a felony charge of third-degree burglary, which would get him a five-year probation. (Had he been a citizen, the same crime would be treated as a misdemeanor.) Ali signed the plea deal, but he still may be able to withdraw it since the judge will not sentence him until September.

Ali says he's been too depressed to shave his wispy chin hairs since he got out of jail six weeks ago. He says he doesn't have confidence in his attorney because she seems too chummy with the prosecutor. She won't let him talk to the prosecutor himself. "When she is talking to him, she's smiling the whole time – she's supposed to work for me," he says.

Observers say Somalis are particularly suspect of court-appointed attorneys.

"Their level of mistrust of the government is multiplied by the fact that the public defender is paid by the government," says Castro, who is with the public defenders office.

Ali is right to be worried about getting deported. Immigration and Customs Enforcement (ICE) will likely detain him if he pleads guilty to a felony. For practical reasons, Somali immigrants are seldom deported because Somalia has no functional national government to accept deportees. If ICE did detain Ali, it would likely hold him for 90 days and then release him. But it would keep track of him until conditions in Somalia change.

If he's lucky, Ali could get a plea agreement like disorderly conduct. A good plea deal would be related to what happened, would be lesser than a felony, and wouldn't fit into a deportable category of crimes like theft, says Professor David Weissbrodt, who teaches immigration law at the University of Minnesota.

"You need a plea agreement that avoids admitting to deportable crimes," says Weissbrodt. "Your lawyer needs to be creative," he says, noting that a cooperative prosecutor helps as well.

Plea agreements can save the day, or seal an immigrant's fate. When Congress passed the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, it created a laundry list of crimes that could lead to deportation. It expanded the list of violent crimes to include theft, including shoplifting, or writing too many bad checks. And, within the last few years, ICE's expanded budget allows it to closely monitor immigrants in the justice system.

Between October 2006 and 2007, ICE deported 285,157 immigrants nationwide. Over one-third of those were deported for criminal convictions.

In Minnesota, deportation proceedings take place twice a week. "Every day there is someone who says they didn't understand their plea," says Kim Hunter, an immigration attorney who serves on a panel to screen immigrants at deportation proceedings.

As a rule, Hunter says, immigrants need to consult with an immigration attorney when they are considering a plea deal. She says judges don't know whether to believe immigration attorneys about immigration consequences because "there are a lot of different versions of what can happen out there." But if a defendant brings in an immigration attorney, Hunter says, it gives the judge confidence that the court is hearing from an expert.

"It's sort of hearing it from the horse's mouth," she says.

Hunter does consult with public defenders and defense attorneys when they call her. So does The Immigrant Law Center of Minnesota, a nonprofit specializing in immigration law. It has created a manual for defense attorneys to use in immigration cases because the problem was so pressing.

These days, Ali sits in his sister's home in Burnsville, a suburb of Minneapolis. It's bigger than a jail cell he says, but he's worried. He's worried sick about getting a felony conviction because that would make it hard to find work and also because he will be stuck in Minnesota. His sister is moving to

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Canada, and his stepmother is going back to Africa. Even if ICE doesn't put a hold on him, he doesn't know what he'll do.

"I'm the only one -- everybody is leaving," he says.

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