

Some immigrants charged in Alameda County courts could avoid deportation under DA's new guidelines

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Oakland Tribune

Posted: 11/01/2012 06:14:27 AM PDT

Updated: 11/01/2012 06:14:34 AM PDT

In a new strategy to stop minor crimes from triggering deportations, Alameda County's district attorney has instructed prosecutors to allow some immigrants to avoid convictions that could get them expelled from the country.

District Attorney Nancy O'Malley's new policy makes Alameda one of a handful of counties in the nation, including Santa Clara, where prosecutors are openly considering the threat of deportation in evaluating how they seek guilty pleas for low-level crimes.

Some legal immigrants caught committing minor crimes might be able to avoid mandatory deportation in exchange for longer jail sentences or other penalties under O'Malley's new plea bargain guidelines.

"We're not talking about giving alternative charges to serious and violent felons," O'Malley said in an interview. "We're looking at this in minor crimes, such as misdemeanor petty theft and minor drug convictions."

According to federal laws made more strict in the 1990s, legal immigrants who have not obtained U.S. citizenship are forced to leave the country if they are convicted of certain crimes. Illegal immigrants, while always subject to deportation, can also face more severe consequences if convicted of a crime that bars them from ever returning.

Defense attorneys say the new policy could benefit some illegal immigrants, though O'Malley said the focus is on legal immigrants. O'Malley said she is following the lead of a 2010 U.S. Supreme Court ruling that said "deportation is an integral part -- indeed, sometimes the most important part -- of the penalty that may be imposed on noncitizen defendants who plead guilty" to certain crimes.

The new guidelines follow similar rules that Santa Clara County District Attorney Jeff Rosen issued last fall.

Rosen crafted his policy not long after defeating incumbent District Attorney Dolores Carr, who had vowed not to alter pleas for immigration-related reasons but was accused during the

campaign of doing just that to help a Stanford University foreign student whose lawyer was a campaign contributor.

Now, Santa Clara prosecutors uniformly treat immigration consequences as a normal part of negotiations over criminal cases to avoid the "shattering, life-altering consequences" of deportation when such a punishment far exceeds the crime, said assistant district attorney David Angel.

In Santa Clara, as in Alameda, the policy mostly benefits legal immigrants or illegal immigrants who already had some chance at legal residency.

For the most part, "if someone's not here legally it's not going to help them," because they are already subject to deportation, Angel said.

The policy has helped Santa Clara avoid costly trials against immigrants who are more likely to settle if their guilty plea doesn't force them to leave the country, according to a Georgetown Law Journal study being published next month.

"For years, there had been a perception and ethic among prosecutors that a criminal defendant's immigration status was irrelevant to negotiations on the case," said Ray Keller, a senior assistant public defender for Alameda County. "There were many defendants charged with relatively minor crimes who would be convicted, pay a fine, be on probation, and then discover they would be deported after living legally in the country for 20 years and raising a family here."

It is unclear how many criminal cases Alameda County's new guidelines will affect, but since 2010 more than 1,700 people who were first arrested by local police in Alameda County have been deported. Of those, 73 percent had been convicted of a crime; about 29 percent had been convicted of crimes that U.S. Immigration and Customs Enforcement labels as the most serious.

O'Malley downplayed the significance of her new guidelines, saying it was always "very rare" for a truly minor conviction to lead to deportation. "No specific formula" will dictate how her office prosecutes defendants who are not citizens, but prosecutors are being trained to understand complex immigration consequences and to incorporate that knowledge into bargaining for a guilty plea, she said.

For example, jail sentences could be reduced by a day to avoid mandatory deportation that comes with a yearlong sentence, or a defendant accused of dealing drugs could plead guilty to a lesser charge of possession, said Raha Jorjani, an in-house immigration consultant for the Alameda County Public Defender's Office who urged the district attorney to craft the new guidelines.

Citing the "dramatically raised" stakes of an immigrant's conviction because of laws enacted in the 1990s, the U.S. Supreme Court ruled in 2010 that defense attorneys must inform an immigrant if a conviction could result in deportation. The highest court took up the case after a truck driver and legal immigrant, Jose Padilla, had pleaded guilty in Kentucky to a felony drug charge, unaware that the conviction would force him to return to Honduras after decades living in the United States.

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