Domestic Violence Ground of Removal

In 1996, Congress added a ground of deportability for domestic violence convictions and for violations of civil protection orders. 8 U.S.C. § 1227(a)(2)(E), I.N.A. § 237(a)(2)(E). A person is deportable for a conviction for a domestic violence offense if on or after September 30, 1996, he or she is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment.

The statute defines domestic violence as a crime of violence (as defined in section 16 of Title 18) "directed against a current or former spouse, co-parent of a child, co-habitator, or other person similarly situated under domestic violence laws." A crime of violence under 18 U.S.C. § 16 includes an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another or a felony that by its nature involves significant risk of use of such force. Thus, simple assault may come within this ground of deportability under this section if the victim was, for example, a former cohabiting girlfriend.

The ground of deportability also applies when a noncitizen is enjoined by a protective order and is found by a criminal or civil court to have violated the portion of the order that protects against credible threats of violence, repeated harassment, or bodily injury.

The Statutes

Domestic Violence Deportation Ground

The domestic violence deportation ground is at INA § 237(a)(2)(E), 8 USC § 1227(a)(2)(E)

(i) Domestic violence, stalking and child abuse –

Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of Title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual’s acts under the domestic or family violence law or the United State or any State, Indian tribal government, or unit of local government; and

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1 This section is excerpted from Brady & Kesselbrenner, Grounds of Deportability and Inadmissibility Related to Crimes (April, 2003) (full text available at www.nationalimmigrationproject.org).
2 Statute provided by Gail Pendleton.
(ii) Violators of protection orders –

Any alien who at any time after admission is enjoined under a protection order issues by a court and whom the court determines has engaged in conduct that violated the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purposes of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendent elite order in another proceeding.

18 U.S.C. § 16: Crime of Violence (key elements italicized)
The term “crime of violence” means –

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

DHS “Detainers” and Detention

Often while in the local jail or prison, there will be an DHS “hold” or “detainer” placed on a noncitizen. A detainer “is a request that such agency advise the [DHS], prior to release of the alien, in order for the [DHS] to arrange to assume custody...” 8 C.F.R. 287.7(a). If the DHS has placed a detainer on a noncitizen, then the jail or prison authorities will notify DHS when they are going to release the noncitizen. Once the noncitizen is no longer subject to criminal custody, DHS has 48 hours within which to take him/her into DHS custody. If DHS does not, the jail or prison has no authority for further detaining him/her and should release the noncitizen.

Under current immigration law, the majority of noncitizens facing deportation/removal for criminal convictions will be subject to mandatory detention during the duration of their immigration proceedings. Depending on whether the noncitizen contests deportation/removal in proceedings before an immigration judge and/or federal court (where possible) these proceedings can last anywhere from three weeks to three years. While there are several categories of noncitizens exempt from this mandatory detention requirement, most noncitizens facing removal for crimes will be subject to detention until they either are deported/removed or successfully fight their deportation/removal.

Noncitizens NOT subject to the mandatory detention provisions are eligible to post bond and be released during the pendency of their proceedings. As a practical matter, it is difficult for the majority of noncitizen detainees to do this since DHS bonds are often high (upwards of $10,000) and bond agencies as a rule do not post bond in immigration proceedings (due to their lengthy duration).

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3 This section excerpted from Benson, supra note 1.