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## METRO NEWS

MONDAY • August 28, 2000

# GLOBAL ATLANTA: Easing up on deportation

### Every Monday, a look at our changing communities

Mark Butler - Staff

Monday, August 28, 2000

The law on immigrants who commit crimes is clear --- a one-year sentence gets you a one-way ticket out of the United States.

It makes no exception for petty criminals like the Laotian man who came to Georgia at age 3 and shoplifted blue jeans in a fit of teenage rebellion. Or the Nigerian woman in Cobb County who said she tried to return a \$15 baby outfit without a receipt and wound up charged with shoplifting. Or the Covington woman who came from Germany before she turned 2 and whose only crime was to pull a woman's hair in a spat about a man in 1988.

Federal immigration law lumps them with drug dealers and rapists and says they must be deported, even if they never spent a day in jail.

Despite that clarity, the Immigration and Naturalization Service is getting ready to look the other way in some cases. The agency is writing guidelines to tell officers around the country that they can use what's known as "prosecutorial discretion" --- basically the judgment of an INS officer --- in deciding whether to deport petty criminals.

The change could affect thousands of legal immigrants in Georgia and around the country.

It comes months after a Georgia case cast a harsh spotlight on the '96 law and as the Georgia Board of Pardons and Parole continues to pluck immigrants from the jaws of deportation by forgiving transgressions most everyone else forgot about years ago.

Russ Bergeron, chief INS spokesman in Washington, said the agency plans

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to send guidelines nationwide --- he did not know when --- in the belief that Congress went too far when it passed the Illegal Immigration Reform and Immigrant Responsibility Act in 1996. The law stripped immigration judges of the power to prevent some deportations and it dramatically increased the list of crimes that trigger deportation.

Several members of Congress have urged the INS to use discretion and not target for deportation people with only a small and distant blemish on their record. The authors of the 1996 law say it was never their intent to kick out legal immigrants who committed minor crimes.

The INS's top lawyer, Bo Cooper, said the agency lacks the staff to enforce all immigration laws against everyone it suspects of breaking those laws. In a memo, prepared in advance of new guidelines, Cooper said it's up to INS officers "to enforce --- or not to enforce --- the law against someone; in other words, to proceed against Person A, but not Person B, even though the law would authorize action against both."

The law has led to an increase in the number of deported criminals. Prior to 1996, few legal immigrants were deported for committing minor crimes. Since then, Bergeron said, several hundred have been deported for not-so-serious offenses.

In the INS's Atlanta district, which covers Georgia, Alabama, North Carolina and South Carolina, the INS is on a pace to deport about 1,510 immigrants this budget year, compared with 933 last year. It's impossible to say how many people were deported for small-time crimes, but local immigration lawyers know of several dozen, including an Ethiopian immigrant who stole a chicken sandwich in 1998 and a Nigerian who swiped two boxes of doughnuts in 1997.

Some worry about how discretion is exercised.

Prosecutorial discretion is just a fancy term for what a cop does when he pulls over one speeder but not another though both are breaking the law, said Bennett Gershman, a professor at Pace Law School in White Plains, N.Y. He said discretion raises the prospect that an INS officer would use power to begin deportation proceedings against one person while giving a break to someone in a similar situation, though complaints of selective enforcement rarely succeed in court.

"The problem with discretion is some people are going to be hurt very badly," he said.

The fate of legal immigrants could hinge on the whim of an immigration officer.

"You might get an INS officer on a bad day," said Mary Anne Gehris, a Covington woman who made national headlines this year when the INS sought to deport her for pulling another woman's hair in 1988.

She agrees with advocates, members of Congress --- even the INS --- that giving officers the leeway to tread lightly is a temporary and imperfect fix. She said the real solution lies with Congress, which is considering six bills to revise a law that many consider Kafkaesque in its cruelty.

As Congress debates the bills, Georgia's booming immigrant population

remains especially vulnerable to deportation because of a quirk in the state's criminal justice system, said Carol Wolchok, director of the American Bar Association's Center for Immigration Law and Representation. When Georgians plead guilty to a misdemeanor --- whether it's drinking in public or shoving a neighbor --- they typically get a 12-month prison sentence that judges suspend on the condition that the person spend a year on probation.

The one-year prison sentence is what triggers deportation. If judges just put defendants on probation and did not take the initial step of technically imposing a prison sentence, the sentence would not lead to deportation, said Socheat Chea, an Atlanta immigration lawyer.

So why do judges impose a prison sentence and then promptly suspend it? They want offenders to know that judges can actually put them behind bars if they get into more trouble with the law or otherwise violate conditions of their probation.

As awareness of the immigration law spreads, a few Georgia judges have started to sentence immigrants to 11 months and 29 days, an amount just short of the deportation threshold. And the state legislature passed a law this year --- it took effect last month --- that requires judges to warn immigrants that guilty pleas could affect their immigration status.

Meanwhile, the Georgia Board of Pardons and Parole has taken the extraordinary step of pardoning 38 immigrants with misdemeanor convictions that put them on the road to deportation, said Kathy Browning, board spokeswoman. At least 30 more immigrants have asked for a pardon. The board had given one such pardon in the last three years.

One of this year's reprieves went to Gehris, whose adoptive parents brought her here from Germany when she was about 2. When she was 22, she pulled another woman's hair in a tussle over a man and got a year on probation from a Rockdale County judge. The INS learned of the conviction after she applied to become a U.S. citizen. It sought to deport her to Germany even though she speaks no German and has only distant relatives there.

Gehris has told her story to news reporters and filmmakers around the country. In July, several congressmen introduced her at a press conference designed to highlight flaws in the law.

"I believe in my heart that something good is going to come of all my suffering," Gehris said.

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