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SB 1310: What a difference a day makes

By Katherine Brady

Last week, Gov. Jerry Brown signed Senate Bill 1310, a law that reduces the maximum penalty for a California misdemeanor by one day, so that a misdemeanor will carry a potential sentence of 364 days rather than 365.

That one-day change makes a world of difference to immigrants living in California, and their U.S. citizen friends and family members.

Due to a glitch between federal and state law, a state misdemeanor that carries a potential sentence of up to a year is treated like a felony for immigration purposes. For example, under "moral turpitude" provisions, conviction of just one California misdemeanor, such as shoplifting or passing a bad check, can cause a relatively new, lawful immigrant to be stripped of his or her green card and deported. This is true regardless of the hardship caused, and even if the person was not sentenced to a single day of jail.

Consider 23-year-old Anita, a permanent resident of four years who is the wife of another permanent resident, the mother of a U.S. citizen baby, and the daughter of a citizen mother and step-father. She is convicted of shoplifting, in California "misdemeanor commercial burglary," for taking \$20 worth of food from a supermarket. She is ordered to pay restitution and court costs and is sentenced to probation.

Before SB 1310, this conviction

would make her deportable. In recent years, thousands of California residents already have been deported in similar cases. The one-day change wrought by SB 1310 will take care of this particular problem, so that under its provisions Anita will not be deportable (although she will be if she ever gets another shoplifting conviction).

migrant-rich state. According to the 2010 census, one out of four persons living in California was born in another country. One out of two children in the state lives in a household headed by at least one foreign-born person (and over 90 percent of those children are U.S. citizens). In California, relatives, neighbors, friends and coworkers likely are, or once

alternative treatment-based programs for these first offenders, which, if completed, will allow them to avoid conviction under state law. Unfortunately, these programs are useless for permanent residents and other immigrants because federal law does not recognize the state's act in withdrawing the plea — the person will be found deportable.

With Congress unable to fix these basic legal issues, states take up the slack. It is encouraging that California supports the proposition that a family should not be destroyed, and a community fractured, for these misdemeanors.

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The issue is not unique to California. Washington, Nevada and New Mexico recently changed their state misdemeanor definitions in the same way for the same reason, and more states are expected to follow. In all cases, the bills passed and were signed with bipartisan support.

Why are state governments concerned about deportations? Legislators are learning that deporting residents for minor crimes is not only economically and emotionally devastating to the deportees and their family, but is disruptive to the whole community. The disruption is particularly intense in our im-

were, non-U.S. citizens.

In essence, for a significant portion of our state, conviction of the wrong misdemeanor is an offense punished by banishment. And we are living in an historic era of mass deportation: Nearly 2 million people have been deported from the U.S. just since President Barack Obama took office in 2008.

While SB 1310 helps with the 365-day issue for some types of offenses, other problems remain. Perhaps most critical is the terrible consequences to a noncitizen who is charged with a first offense for possessing a small amount of an illegal drug. California has created

Katherine Brady is a senior staff attorney at the Immigrant Legal Resource Center. She is the co-author of "Defending Immigrants in the Ninth Circuit" (www.ilrc.org) and the forthcoming "California Criminal Defense of Immigrants" (www.ceb.com).



KATHERINE BRADY
Immigrant Legal Resource Center