

Commentary

Will Bail Reform in NJ Have Positive Impact on Immigrant Community?

By Milena A. Wilson

On Jan. 1, 2017, a new bail system will be in effect in New Jersey. The new system will shift from a monetary-bail based system to a risk-of-danger based system for the consideration of release from custody for persons pending criminal proceedings. The new bail system also has a speedy trial component that is purposed to reduce the amount of time a person is held in custody pending trial.

Some have expressed concern about the cost to accommodate the bail reform due to the need for increased staff and resources. Despite the concern for cost, I believe that New Jerseyans made an informed decision. New Jerseyans considered the cost and chose to help fund a fairer bail system. This change was needed as a measure of justice for those most vulnerable in our society who could not afford to pay for release from custody while awaiting the resolution of pending proceedings. Among some of those most vulnerable are members of the immigrant community.

I teach a "crimmigration" course at

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Rutgers University. The course introduces students to the immigration consequences to non-American citizens for criminal activity. Recently, I was lecturing on the discretionary bond relief for the release from detention during pending immigration removal proceedings that is available for a limited class of non-American citizens. A student asked me whether or not bond relief from immigration detention will still be applicable once New Jersey's bail reform becomes effective. (Great question, Jair Bodnar! It was your inquiry that inspired this article.)

My response to the student was that, first of all, I am looking forward to the upcoming seminar on Jan. 18, 2017, that will be presented by the Criminal Law Section of the New Jersey State Bar Association. The seminar will provide guidance on the practical application and the procedures resulting from the bail reform. Second, and more importantly, regardless of any particular state's laws and procedures, the Immigration and Nationality Act (INA) is the statutory authority for laws that are specifically applicable to non-American citizens. The INA is of federal applicability. Accordingly, the bail reform in New Jersey is technically of no legal consequence to the immigration detention bond relief. On a practical level, the impact New Jersey's bail reform will have on the local immigration bond

relief decision makers remains to be seen.

My student's question is what led me to ask the question I pose here: Will the bail reform in New Jersey have a positive impact on the immigrant community?

I tend to be a hopeful optimist. I am sure that many, like me, hold on to hope that the bail reform will awaken the consciousness of our local Department of Homeland Security (DHS) officers and our local immigration judges to use their discretion in a more compassionate and fair manner to reflect the principle of New Jersey's decision to shift to a risk-based system versus a monetary based system to determine who will be eligible for release from immigration detention.

I asked a former immigration judge her thoughts on the matter. Her response was quite enlightening in that she believes there may be a greater and graver consequence to the immigration law practice due to the speedy trial component of the bail reform. As I contemplated her seeming pessimism, I realized that it was not pessimism that she was dispensing but, instead, realism. So, yet again, despite my hopeful optimism, I have to balance it with a healthy dose of reality.

The speedy trial portion of the bail reform may have an unintended negative consequence on our local immigration community if the state pros-

ecutors choose to control the number of their active cases by attempting to shift cases of non-American citizens to DHS. This can result in the creation of a new local version of the defunct Secure Communities Initiative. The defunct program was meant to serve as an immigration law enforcement practice wherein, by use of integrated technology, varied local, county and state enforcement agencies became partners with immigration enforcement agencies for the purpose of identifying prospective immigrants that may be subject to removal from the United States.

Ultimately, the speedy trial component of New Jersey's bail reform may have an exponential detriment to immigrants who may be claimed expeditiously by DHS, after some nudging by the state prosecutors. Once on DHS's radar, a Pandora's Box may open for these persons. How will this impact an individual who still has a pending criminal proceeding, but who DHS contends has a prior conviction that subjects him/her to removal proceedings? How will this impact an individual with no record of conviction but who DHS deems to be present without inspection or admission? And the questions go on and on.

So, back to the initial question ... will the bail reform in New Jersey have a positive impact on the immigrant community? In the words of a wise Zen Master, "We shall see." ■