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##### MEMBER

NJ, NY & FL BARS

May 15, 2013

*Via facsimile and regular mail*

Re: State v. Mr. Jones

Immigration Consequences of Indictment

**I am of the opinion that Mr. Jones WILL BE subject to deportation should he be forced to plead guilty to the Indictment as drafted. HOWEVER, an amendment to NJSA 2C:39-5d using the bullet proof vests as “weapons” WILL NOT subject him to deportation.**

Dear Mr. Attorney:

Thank you for referring Mr. Jones to my office for an evaluation of the immigration consequences of his New Jersey criminal charges. Mr. Jones indicated that he has NO prior criminal record and has possessed a “green card” for at least 15 years. Should any of the information provided by Mr. Jones be inaccurate, such misinformation could result in a very different opinion from this office.

Mr. Jones has provided me with a copy of the indictment, grand jury minutes and police investigation report. Mr. Jones has been charged with four counts under indictment 11-06-01137-I. The charges are N.J.S.A. 2C:21-25. Financial Facilitation of Criminal Activity (Counts One and Two), N.J.S.A. 2C:39-4a. Possession of Weapons for Unlawful Purposes (Firearms)(Count Three) and N.J.S.A. 2C:39:-5b. Unlawful Possession of Weapons (Handguns)(Count Four). The following is a discussion of each of the charges as related to Federal Immigration Law.

**Money Laundering**

§101(a)(43)(D) of the Immigration and Nationality Act: an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

The above federal offense is an aggravated felony that almost always results in a foreign nationals immediate detention and deportation. In Mr. Jones’s case, the dollar amount is $519,843. This amount appears in his indictment and is easy accessible by the immigration authorities. The New Jersey statute 2C:21-25 has a “money laundering” component (subsections a-d) and a “failure to report” component (subsection e). In my opinion, a guilty plea to the money laundering component would be disastrous for Mr. Jones.

On the other hand, a guilty plea to the failure to report component of N.J.S.A. 2C:21-25e would most likely **not** result in deportation:

We have held that New York's money laundering statute constitutes a categorical crime involving moral turpitude because it proscribes “intentionally making the exchange of proceeds of specified criminal conduct to conceal or disguise the nature, the location, the source, the ownership, or the control of such proceeds.” See *Matter of Tejwani*, 24 I&N Dec. 97, 98-99 (BIA 2007). In contrast, we have also determined that structuring a currency transaction to evade reporting requirements when the conduct does not require evil intent, does not require knowledge of the illegality of the conduct, and does not inherently involve fraud on the government, is not a crime involving moral turpitude. See *Matter of L-V-C*-, 22 I&N Dec. 594, 604 (BIA 1999). Similarly, the United States Court of Appeals for the Ninth Circuit has held that the act of structuring financial transactions with domestic financial institutions to avoid currency reports, in violation of 31 *U.S.C.* § 5324, is not a crime involving moral turpitude because the conduct does not require evil intent or knowledge of illegality of the conduct, and does not inherently involve fraud on the government. See *Goldeshtein v. INS*, 8 F.3d 645, 648 (9th Cir. 1993).

Based on the above immigration case law, in all likelihood, Mr. Jones would not be subject to deportation if he pled guilty to subsection “e”. The factual basis would have to relate to a violation of 31 *U.S.C.* §5311 *et seq*. or 31 *C.F.R.* 103 *et seq*. However, I can find no factual basis in the case investigation police report or grand jury minutes to support such a conviction.

A guilty plea to the third charge of *N.J.S.A*. 2C:39-4a. Possession of Weapons for Unlawful Purposes (Firearms) or the fourth charge *N.J.S.A*. 2C:39:-5b. Unlawful Possession of Weapons (Handguns) would again result in Mr. Jones being subject to removal pursuant to the following:

**Guns**

I&NA §237(a)(2)(C) Certain firearm offenses.

Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code in violation of any law) is deportable.

The Case Investigation Report by Detective Robert Till dated November 19, 2010 on page 12 last paragraph and continuing onto page 13 indicates that the detectives conducted a consent search of the address Mr. Jones claimed to reside. They found, among other things, three “Police” type bullet proof vests. The items were seized and secured as evidence.

You indicated that the State would be willing to accept an amendment and guilty plea to *N.J.S.A*. 39-5d (Other weapons) with a simple allocution that he possessed these items. I do not believe it necessary to have the defendant state the possession was under circumstances not manifestly appropriate for such lawful uses. In my opinion, this is not a crime involving moral turpitude, does not fall within the parameters of 18 *USC* 921(a) [attached for your review] and would not result in Mr. Jones being placed in removal proceedings.

Thank you again for referring Mr. Jones to my office. Please contact me at the above number should you wish to discuss Mr. Jones’s case further.

Very truly yours,

Ronald P. Mondello

Enc.

RPM/cab

cc: Mr. Jones