

# **Winston-Salem Journal**

## Deportation cases on the borderline

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Erick Velazquillo, who was brought by his parents illegally into the United States from Mexico when he was 2, will not be deported.

Not for now.

At an immigration court hearing last week in Charlotte, Velazquillo, 22, heard that his deportation proceeding would be continued until Sept. 6, a request submitted by his attorney.

The continuance merely delays the possibility that Velazquillo might be deported. What he really wants is deferred action, a measure that immigration officials can exercise in certain cases to halt deportation proceedings, said Domenic Powell, one of the founders of the Dream Team, a Charlotte-based immigrant advocacy group.

"It is like living in the United States on probation," Powell said. "It gives him more time to find a path to legalization."

Because Velazquillo has graduated from high school, received an associate degree from a community college and has no criminal record except for some vehicular violations, according to his attorney, his case has become a testing ground for a shift in focus recently set forth by John Morton, director of U.S. Immigration and Customs Enforcement.

In a letter dated June 17, Morton advised the agency's field office directors, special agents and chief counsel to concentrate more on deporting those who are threats to national security and public safety.

"Because the agency is confronted with more administrative violations than its resources can address, the agency must regularly exercise 'prosecutorial discretion' if it is to prioritize its efforts," Morton said in the letter.

"When ICE favorably exercises prosecutorial discretion, it essentially decides not to assert the full scope of the enforcement authority available to the agency in a given case," he said.

Nearly half of the immigrants processed by an immigration court in the United States were not convicted of criminal offenses, according to statistics provided by ICE officials for federal fiscal year 2011, which started Oct. 1.

From that date to July 4, ICE has removed 289,386 immigrants. Of that number, 148,182 were convicted criminals and 141,204 were noncriminal immigration

violators, according to ICE officials. Being in the U.S. without authorization is a civil offense, not a criminal one.

Through the Atlanta regional hub, which includes Georgia, North Carolina and South Carolina, ICE has removed 16,978 immigrants during the same period. Of that number, 10,518 were convicted criminals and 6,460 were noncriminal immigration violators.

Morton's letter to his field offices suggests that the number of criminal cases should increase more than noncriminal cases, such as Velazquillo's. Instead, priority should be given to cases involving threats to national security and public safety, the letter said. In fact, Morton listed several factors that ICE officials can weigh while exercising prosecutorial discretion.

Among them are "the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child."

In addition, ICE officials may consider "the person's pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States."

Velazquillo, who has lived in the United States for 20 years, has gotten an associate of arts degree from Central Piedmont Community College and has an acceptance letter from UNC Charlotte.

Velazquillo's deportation proceedings began in October, when he was going home from a gym in Matthews. A police officer stopped him for driving with high beams on.

Velazquillo was arrested on charges that he was driving with an expired license, among other vehicular infractions, which have been resolved.

In immigration court this week, his attorney asked for the continuance of the deportation proceedings because his attorney wants more time for Velazquillo to gain legal status.

"It's upsetting. It's kind of hard not to know what your future will be, but we're going to keep on fighting. We have to," Velazquillo said.

In the lead-up to the court hearing, the NAACP sided with the Dream Team to support Velazquillo.

"Whenever anyone attacks our Latino and undocumented brothers and sisters, they attack our NAACP members; they attack all people of color; and they attack all people of good will who believe we must repair the breach in the human race caused by racism, not widen it," said the Rev. William Barber, who is the president of North Carolina's NAACP.

He also urged the two U.S. senators from North Carolina, Richard Burr and Kay Hagan, to intervene on Velazquillo's behalf.

"I am not aware of any attempt by Mr. Velazquillo to contact Senator Burr's office for assistance, but regardless, the senator and his staff are unable to interfere with ongoing legal proceedings," David Ward, a spokesman for Burr, a Republican, said in an email.

A spokesman for Hagan, a Democrat, said the senator does not comment on specific cases. But a recent letter dated July 15 obtained by the Winston-Salem Journal from Hagan to Morton, the ICE director, does shed light on her stance regarding prosecutorial discretion and seems to support Velazquillo's case.

"I ... urge the agency to focus its limited resources on individuals who pose a risk to national security or public safety and to use discretion in expending precious resources on individuals who may fall within the guidelines put forward in your memo, which include criteria such as strong family and community ties, no criminal record, a history of sustained pursuit of education, and entry into this country at an age that suggests the decision to enter was controlled by others," Hagan said in the letter.

Velazquillo's case highlights the complex nature of the immigration issue in the United States. There are an estimated 11.2 million immigrants who are not authorized to be in the United States, according to the Pew Hispanic Center.

While there is agreement about enforcing border security, different opinions exist on what to do with those who are already in the United States -- particularly those who, like Velazquillo, played no part in the initial decision of entering the country.

One of the possible remedies is legislation commonly known as the Dream Act, or the Development, Relief and Education for Alien Minors Act of 2011.

The federal proposal would give conditional permanent residency to immigrants who entered the United States illegally on or before his 15th birthday, have not been convicted of certain offenses under federal or state law, have been admitted to an institution of higher education in the United States or earned a high school diploma or general education development certificate.

Hagan and Burr have opposed similar legislation.

James Carafano, a homeland-security expert for the Washington-based Heritage Foundation, said the legislation is bad policy.

"It basically incentivizes people to do illegal activity. Everybody is dissatisfied with the unlawful population in the United States, and I don't understand why people want to pass a law which essentially encourages people to do exactly the same thing," he said.

The Immigration Reform and Control Act of 1986, which was enacted under the Reagan administration, gave amnesty to about 3 million people.

And that did not work, he said.

"Every modern country that has tried an amnesty as a solution to immigration reform has found that this only incentivizes more illegal entry and unlawful

presence. How many times do you have to go down this road to find out that as a public policy it just doesn't work?" Carafano asked.

Velazquillo's situation, or similar ones involving immigrants who were brought to the United States at a young age by their parents, does not present a compelling case for the Dream Act, according to Carafano.

"We didn't create the situation," he said. "Their parents did."

Dan Griswold, a trade and immigration expert at the **Cato Institute**, disagreed with that point of view.

"The Dream Act makes the best of a bad situation. These kids came here through no fault of their own. They were just obeying and following their parents.

"By definition, they have assimilated. They were here during their teen years. They speak English fluently. They're headed off to college or military service. It's a virtually zero-risk, high payoff group of potential legal immigrants. We should embrace them as workers and future American citizens," Griswold said.

#### DREAM DETOUR

If deported, Fredd Reyes and Erick Velazquillo would have to wait 10 years before being eligible to apply to re-enter the United States. Military service is not an option for Reyes or Velazquillo as a path toward legal status. They are not allowed to enlist because of their status. In 2003, one of the first servicemen to die in the Iraq War was Marine Lance Cpl. Jose Gutierrez, who had entered the United States illegally but went on to get his permanent resident card. He was awarded U.S. citizenship posthumously. In May, the Dream Act of 2011 was introduced in Congress. In the House, the legislation has been referred to the Subcommittee on Immigration Policy and Enforcement. In the Senate, it has been referred to the Subcommittee on Immigration, Refugees and Border Security.