

Andrew Moore is an associate professor at the University of Detroit Mercy School of Law. Here's a transcript of his conversation with WDET's Sandra Svoboda:

Svoboda: When we say "crimmigration," what does that mean?

Moore: "Crimmigration" refers to the convergence of the federal civil immigration system with the state and federal criminal justice system over the past 20 to 30 years.

Svoboda: In general terms what kind of issue arise?

Moore: So with the increasing number of criminal offenses that make an immigrant deportable and the increasing use of the criminal enforcement methods and actors, more and more immigrants are being charged with being deportable for having committed a criminal offense and that then leads to the need to try and figure out if the state offense that someone has been convicted of fits within one of the federal categories that are identified for deporting somebody.

Svoboda: In theory that sounds simple. What kinds of problems does it cause?

Moore: The challenge is that for some of the grounds that our federal immigration law identifies as being grounds for being deportable are very, very broad. For example there's one whole category called the "crime involving moral turpitude." Now of course nobody at the state level is ever convicted of a crime involving moral turpitude so the challenge is trying to fit whether the state offense fits into this broad category. Another example is the crime of violence. There's lot of ways to interpret that federal provision and trying to take a state offense and fitting it into that federal category.

Svoboda: Are there particular cases here in Michigan that we see create that conflict?

Moore: Yes, certainly with the growing numbers of offenses that can render somebody deportable, obviously increasing numbers of people through the state are being drawn into the deportation system through the criminal justice system

Svoboda: What efforts have been undertaken to try to make the state laws and the immigration laws more similar so those conflicts don't arise?

Moore: You've got 51 different criminal justice systems and you've got one overarching civil immigration system. What Congress has done over the years as they've added to the offenses that can render somebody deportable, they've turned to relying upon a federal criminal statute. And what the courts have been doing is trying to figure out if the state offense fits into a federal or generic description of the crime, and then to have that as the model for figuring out whether or not a state offense is the same as a federal generic offense so that you could conclude that somebody should be deported for it. That's sort of the approach that the Supreme Court has established that the federal courts should be taking.

Svoboda: How much of an effect does a president have on this portion of immigration law? In other words are President Trump's polices, can they be aimed at rewriting or changing some of these provisions in federal immigration law?

Moore: Yes. Obviously the president in his role of signing bills into law can participate into that process of drafting them, but President Trump has more particularly in his executive orders sort of emphasized this criminal justice approach by encouraging in cooperative agreements between the federal immigration authorities and state, local criminal enforcement agencies to sort of get into the act of engaging in immigration enforcement which is causing tremendous concern across immigrant communities in the United States.

Svoboda: Is it possible to predict what effect that will have on the court system?

Moore: Yes. I think No. 1 it may well produce more cases of people being charged with being deportable because a state or local agency believed that the person was not in the country lawfully. I think you're also going to see an increasing number of cases based on discrimination arising. The challenge of this, of course, is state and local law enforcement agencies not really being trained in immigration enforcement I think may be drawn in to this by making assessments about whether somebody has an immigration issue based on their appearance and that of course leads down the road to a lot of problems with profiling.

Svoboda: What's the greater fix at the federal level?

Moore: Well, one thing would probably be to reduce the numbers of criminal offenses that could render somebody deportable and focus on the more serious ones and have a more general approach so that we look at things like the type of criminal act it was, the length of a sentence and things like that, may be a way of avoiding I think, the challenge of having so many cases in the system and in certain situations you have people being deported for criminal offenses that were an offense in one state but were not a criminal offense in another state. So you also have another complication here is the fact that you wind up with inconsistency in the enforcement of federal immigration law because you have inconsistency in the state criminal justice system.

Svoboda: Can you give me any examples of crimes that have varying statutes in different states that people may consider lesser offenses?

Moore: Well there's a case going before the Supreme Court right now in which somebody was convicted in California of unlawful sexual intercourse with a minor but the way that California described it, only 17 states currently have that as a criminal offenses. So if that person had committed the act in another state, they never would have been penalized and so wouldn't have ever brought the person within the federal deportation system.

Svoboda: Is the big issue here consistency here between states or is the big issue here figuring out how to deport people for what is actually criminal in our society?

Moore: I think it's both, and the two are tied together. As you increase the number of offenses you increase the problem of inconsistency because states don't define what's considered criminal conduct in the same way. They have significant differences in their statutes. Some states don't define something as a crime. Another state would. I think making the grounds for deportation more generic and having fewer possible criminal offenses would alleviate the pressure on the federal immigration system.