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## Investigative Report:

Philadelphia District Attorney Larry Krasner's office is using city funds for an attorney to help non-citizens charged with serious crimes – such as rape, robbery, strangulation, aggravated assault, and even homicide by vehicle – avoid deportation.

**Key Takeaway:** An IRLI investigation found that the Philadelphia District Attorney (DA) has created a unique position known as “Immigration Counsel.” In essence, the Immigration Counsel is an attorney who provides free immigration defense services to alien criminal defendants, courtesy of Philadelphia taxpayers. If this seems like a strange practice for a DA's office and a flagrant conflict of interest, it is. Nevertheless, Philadelphia's DA has been helping aliens charged with all manner of violent crimes remain in the country by deliberately pleading down, dismissing, or refusing to pursue criminal charges, specifically in order to allow them to avoid “immigration consequences,” (*i.e.*, removal from the United States). And this is occurring despite initial pledges by Krasner not to assist illegal aliens who have been accused of heinous crimes like rape, manslaughter and murder.

## INTRODUCTION

Krasner was elected in November 2017. Prior to running for office, he spent decades working as a private bar criminal defense attorney. Before that he served with the Federal Public Defender's Office. While a defense attorney he sued the Philadelphia Police Department [75 different times](#).

Krasner was supported by billionaire [anti-borders](#) activist George Soros and ran on a [soft-on-crime](#), anti-establishment [platform](#) that promised to forego the majority of marijuana prosecutions, to eliminate cash bail and to seek non-incarceration sentences, even for felony crimes.

One of the major planks of Krasner's platform was what he referred to as "immigration neutral outcomes" – or the practice of only seeking criminal charges that will not result in deportation whenever prosecuting non-citizens. Krasner was also a vocal advocate of sanctuary policies, refusing to cooperate in any way with U.S. Immigration and Customs Enforcement (ICE).

Krasner is part of a recent wave of state prosecutors whose primary concern is not trying and convicting criminal defendants. Rather, their foremost interest is in protecting criminals from the consequences of their bad behavior, on the flimsy premise that the American justice system is designed solely to oppress certain groups of people, among them immigrants.

DAs in this group, including Krasner, George Gascon in Los Angeles, Chesa Boudin of San Francisco (prior to his ouster) and Eric Gonzalez in Brooklyn, deliberately set out to use their powers of prosecutorial discretion to impede the enforcement of federal immigration law, based on their individual and personal belief that [conviction for a crime](#) "should not lead to deportation or necessarily risk one's immigration status."

In order to implement his pro-alien, anti-borders policies, Krasner hired a taxpayer-funded attorney – known as the Immigration Counsel – whose primary role is to tell the 300 prosecutors employed by the City of Brotherly Love when they should dismiss or alter charges to keep criminal aliens out of federal deportation proceedings.

To silence critics, who correctly accused Krasner of discriminating against U.S. citizens in favor of foreigners, Krasner claimed that his "immigration neutrality" principles would be applied using a [sliding scale](#) that would take into account the severity of the alien's offense. But the reality is that even aliens who have been

convicted of serious, aggravated felony crimes are being given special consideration based on their status as foreign law breakers.

That's right, Philadelphia's chief prosecutor and the lawyers under his control in the Philadelphia District Attorney's Office have begun intruding into the federal immigration sphere, in an intentional and concerted effort to impede federal enforcement of the Immigration and Nationality Act (INA). If you're an alien who commits an egregious crime in Philadelphia, you're likely to get a slap on the wrist and be protected from ICE. On the other hand, if you're a U.S. citizen who commits a serious felony, you can expect to be charged and prosecuted accordingly.

### **KRASNER'S IMMIGRATION COUNSEL**

The Philadelphia DA's Office of Immigration Counsel was modeled on the [Immigrant Affairs Unit](#) (IAU) set up by radical Brooklyn DA Eric Gonzalez.

According to the Brooklyn DA's website, "The Immigrant Affairs Unit [IAU] investigates and prosecutes individuals and businesses that target and exploit immigrants through fraud." The website also states that the IAU assists aliens who are witnesses to criminal behavior and victims of criminal acts.

However, despite claims that it is dedicated to ensuring that aliens feel safe coming out of the shadows to participate in the criminal justice system, its primary purpose seems to be [interfering with](#) ICE efforts to enforce federal immigration law in Brooklyn. The IAU publicly criticized ICE for conducting what it characterized as the "misguided practice of conducting enforcement actions in and around courthouses" and referred to ICE's fulfillment of its assigned mission as "aggressive federal immigration enforcement." Furthermore, DA Gonzalez has been a vociferous anti-ICE advocate and supporter of sanctuary city policies.

The Immigration Counsel at the Philadelphia DA's office followed suit. Per its website, the Immigration Counsel claims that its primary mission is "making communities safer" by "ensuring victims and witnesses feel safe coming forward and cooperating with the justice system." Nevertheless, it also goes out of its way to note, that ICE Officers "are barred from accessing our local arraignment database" and "police officers are expected to no longer ask [aliens] immigration-related questions upon arrest, including their social security number and country of birth, as no one is now required to expose their immigration status."

According to a profile published by [Medium](#), the Philadelphia DA’s Office’s first-ever Immigration Counsel, Caleb Arnold, formerly worked in the Office of the Colorado State Public Defender in Denver, and later for an immigration law firm where she “evaluated all cases where the client had criminal contact, did deportation defense, both pre and post deportation/removal,” while also doing “niche work analyzing criminal contact and the immigration consequences stemming from that contact.”

This arrangement – essentially hiring a public defender and non-citizen advocate to second-guess prosecutorial decisions – seemed like a recipe for disaster to us. So, the Immigration Reform Law Institute (IRLI) investigated and this is what we found.

## **HOW WE CONDUCTED OUR INVESTIGATION**

IRLI wanted to see how many criminal aliens in Philadelphia were getting free, defense-oriented legal advice from the office that was supposed to be prosecuting them. We also wanted to find out what these aliens were charged with and how much of a threat they present to American communities. Accordingly, we sent the Philadelphia District Attorney’s Office a Pennsylvania Right to Know request – asking for a list of “defendants Immigration Counsel Caleb Arnold has consulted with, or otherwise worked on, over the 2023 calendar year.”

## **THE INFORMATION WE RECEIVED**

In response to our request, the Philadelphia District Attorney’s Office furnished a list of the Immigration Counsel’s active and closed cases for the 2023 calendar year. However, far from being a transparent attempt to provide us with the information we requested, the list appears to have been deliberately formatted in a manner designed to render things as opaque possible:

- Despite the fact that criminal prosecutions are matters of public record, all of the defendants’ names on the list were blacked out, allegedly for privacy reasons.
- The list included the lead charge levied against each defendant. However, the charges were abbreviated, without any direct citations to the section of law under which the defendants were charged.
  - The DA’s office failed to provide any key to the abbreviations it uses.
- All case numbers on the list were blacked out, making it impossible to track the cases and determine the ultimate dispositions.

The criminal charges on the list appear to have included the following:

- 29 Driving Under the Influence cases.
- 21 Aggravated Assault, Domestic Violence and other crimes of violence cases.
- 26 Possession of Drugs with Intent to Distribute cases.
- 9 Rape, Indecent Assault and Sexual Assault on a Child cases.
- 9 Robbery and/or Burglary cases.
- 12 Firearms cases.
- 1 Vehicular Homicide case.

Additional charges on the list included: Terroristic Threats; Flight From a Law Enforcement Officer; Indecent Exposure; and Unlawful Contact with a Minor. There were also several cases involving relatively minor charges, such as Criminal Trespass; Simple Assault; and Simple Theft.

### **WHAT DOES IRLI MAKE OF THIS INFORMATION?**

In 2019, the Philadelphia District Attorney's Office told a local [news outlet](#) that the Immigration Counsel would not assist defendants accused of murder or sex crimes in seeking "immigration neutral outcomes." The Philly DA's website also implies that the services of the Immigration Counsel would be limited to cases involving less serious criminal charges.

However, a simple review of the Immigration Counsel's case list reveals that these claims are not true. A foreign national who speaks no English may be charged with shoplifting after a confusing incident in a retail establishment. However, rape, murder, aggravated assault, drug trafficking offenses and firearms crimes aren't mistakes. They are serious breaches of public safety.

Based on all of the foregoing, IRLI can only conclude that the Immigration Counsel isn't offering a helping hand to poor foreigners who have gotten jammed up through no fault of their own. Rather, the overall goal of the Immigration Counsel appears to be either eliminating, or minimizing, any and all immigration consequences for all foreign criminal defendants.

### **ALIENS AND CRIME**

The Immigration and Nationality Act (INA) is the statute that directs how America's borders should be secured and provides the authority necessary to remove foreign intelligence agents and other foreign nationals whose presence is

considered deleterious to the good order of the United States, including criminal aliens.

If an alien is [convicted of a crime](#) in the United States, he/she will generally be subject to deportation. For foreign nationals convicted of crimes which are characterized within the Immigration and Nationality Act as “[aggravated felonies](#),” relief is limited and removal is common. However, even certain [lesser crimes](#) – particularly those involving drugs, theft or violence – may result in the deportation of an alien.

As their title implies, state prosecutors pursue charges under state law. Transgressions of federal law are handled by federal prosecutors (typically known as U.S. Attorneys, or trial attorneys, depending on which agency employs them).

While they may occasionally collaborate on cases where state and federal laws overlap, state and federal prosecutors typically operate in separate and distinct realms. This is particularly true in the case of immigration law, which falls squarely within the federal law domain. And state prosecutors have no authority to manipulate state charges in order to deliberately frustrate the public safety and national security goals of the INA. Yet, DA Krasner specifically set up the Immigration Counsel to enable criminal aliens to remain in the United States in direct defiance of federal immigration law.

## **INVERTING THE PROSECUTORIAL FUNCTION**

In addition to inappropriately and unlawfully undermining federal immigration law, the Philadelphia DA’s Immigration Counsel inappropriately stands the role of the prosecutor on its head.

DAs are responsible for prosecuting criminal offenders. They seek justice on behalf of the people. That’s why criminal cases are typically labeled *People v. John Doe*, *Commonwealth v. Jane Doe*, or *State v. Madame X*.

The role of a DA is to prosecute individuals who are accused of a crime. And, regardless of the name by which they are known (*e.g.*, district attorney, county attorney, state’s attorney, etc.), they have an ethical obligation to zealously advocate on behalf of their client – the people of the jurisdiction that employs them.

Prosecutors do have a duty to refrain from pursuing unjust charges and to divulge any exculpatory evidence that they may encounter in the course of investigating a crime. However, it is not the function of a prosecuting attorney to defend an

accused criminal from criminal charges. Nor is it the role of a DA to protect a criminal defendant from any collateral effects of a criminal conviction.

Those duties fall to criminal defense attorneys. In the U.S. justice system, defendants are entitled to legal representation. Typically, they retain a private attorney. However, indigent defendants, as a matter of constitutional law are entitled to a free attorney, generally referred to as a “public defender.”

Pursuant to the Supreme Court’s holding in *Padilla v. Kentucky* the responsibility for advising criminal defendants about the potential immigration consequences of a criminal conviction falls to their defense attorney. Neither the courts nor prosecutors have any obligation to protect foreign defendants from the immigration consequences of their criminal acts.

Therefore, it’s shocking that Krasner’s office would hire what amounts to an internally employed public defender; place that individual in direct opposition to the DAs responsible for prosecuting crime in Philadelphia; and give him/her the power to overrule prosecutors and scuttle the pursuit of charges against anyone who happens to be a non-citizen. This arrangement inverts the criminal prosecution function and makes the DA responsible for two mutually exclusive functions: both pursuing and defending criminal charges.

## **CONFLICT OF INTEREST**

Because DA Krasner’s arrangement stands the prosecutorial function on its head, it also creates a significant conflict of interest.

In law, a conflict of interest exists either: 1) when some type of personal interest prohibits an attorney from acting in his/her client’s best interests; or 2) when an attorney is required to perform two separate but mutually exclusive functions – like acting as prosecutor and defense attorney at the same time. Krasner’s appointment of a special Immigration Counsel creates both types of conflicts of interest at the same time.

The citizens of the city of Philadelphia are the primary client of the city’s DA. And the best interests of the people of the City of Brotherly Love are best preserved when their attorneys charge and convict criminals, thereby keeping them from preying upon Philadelphians.

However, Larry Krasner has implemented policies that place his personal interest in frustrating the objectives of federal immigration law above Philadelphia

resident's interest in keeping alien criminals off the streets. And those policies make it virtually impossible for the Assistant District Attorneys who work under him to fulfill their duties to their clients whenever a criminal alien stands in the dock.

Additionally, Krasner's creation of the Immigration Counsel places his office in the impossible position of acting as both prosecution and defense attorney at the same time. Typical prosecutors make an appropriate decision as to what charges should be levied against a criminal defendant and pursue those charges in court, until a verdict is delivered. However, the attorneys working in DA Krasner's office must, whenever a defendant is a non-citizen, assume the role of criminal defense attorney. Then they must undermine their own prosecution strategies, in order to find a method of prosecution that leads to an "immigration neutral outcome," or drop criminal charges in order to ensure that the alien defendant is not deported.

This gives rise to a disgracefully obvious conflict of interest. It generates an untenable situation for prosecutors working in Krasner's office. And both the Pennsylvania courts and bar authority should be forcing Krasner to dump the Immigration Counsel and permit his employees to properly undertake the prosecutorial functions they were hired to perform.

### **KRASNER'S CLAIMS ABOUT UNFAIRNESS TO ALIENS ARE FALSE**

Upon assuming office, DA Krasner implemented procedures that treat U.S. citizens and foreign nationals differently. According to the Philadelphia DA's Office [website](#), "With non-citizen defendants, we seek the fairest outcome, what's called immigration neutrality, by ensuring they are subjected to the same consequences as citizens."

However, there are a number of serious problems with that approach. First off, foreign nationals accused of a crime should be prosecuted in exactly the same manner as U.S. citizens – they should be neither advantaged nor disadvantaged by their lack of citizenship. And the potential for deportation on the basis of a criminal conviction should not figure into: 1) the decision whether or not to pursue charges; 2) the manner in which the case is prosecuted; 3) plea bargaining decisions; or 4) any recommendations with regard to sentencing. Responsible DAs will prosecute foreign nationals just as they prosecute Americans.

If a trial is warranted, criminal charges should be pursued solely on the basis of credible evidence that a crime has been committed; or abandoned solely because



the evidence doesn't warrant the pursuit of criminal charges. And things like a person's wealth, position in the community or immigration status should not figure into decisions about when, whether or how to prosecute an accused criminal. Laws should apply equally to everyone in a particular jurisdiction.

But when a foreign defendant is standing before the bar of justice, DAs in Philadelphia no longer determine appropriate charges based on the severity of the crime, the nature of the available evidence, and the defendant's criminal history. Rather, they immediately begin reducing charges in an effort to avoid immigration consequences. As a result, Krasner's policies give an unfair advantage to foreign nationals, solely based upon the fact that they are not citizens.

Additionally, aliens ***are*** subject to the exact same criminal penalties as Americans. Criminal law in the United States makes no distinction whatsoever between citizens and foreign nationals. A U.S. citizen and a French citizen charged as co-defendants in the same murder will be tried and sentenced in the exact same manner. Claims that alien defendants somehow receive disparate treatment in our criminal courts are blatantly false.

Immigration proceedings are civil proceedings that are entirely separate and distinct from criminal prosecutions. They are federal, civil and administrative proceedings. And the U.S. Immigration Court, the administrative tribunal that hears deportation cases, lacks any capacity to reverse or modify a criminal sentence imposed by a state court.

Ultimately, even though deportation may be one of the many possible consequences of a criminal conviction, it is not in any way punishment for a crime. As the Supreme Court opined, over a century ago, in [\*Fong Yue Ting v. United States\*](#):

The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the nation, acting within its constitutional authority, and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty, or property without due process of law, and the provisions of the Constitution securing the right of

trial by jury and prohibiting unreasonable searches and seizures and cruel and unusual punishments have no application.

Every single type of law – from property law to adoption law – inherently relies on status distinctions that identify the rights and obligations of individuals. It would be utterly impossible to administer a legal system without dividing people into these types of categories. The legal distinction between citizens and aliens is no different than the distinctions between adults and juveniles; employers and employees; property owners and trespassers; married and unmarried persons; and those who are mentally competent versus those who are *non compos mentis*.

Accordingly, Krasner's assertions that the law treats foreigners unfairly are utterly baseless. And his efforts to ensure that aliens never receive sentences that result in deportation is nothing other than a thinly veiled scheme to undermine federal immigration laws that Krasner disagrees with solely on the basis of political ideology.

### **THE PHILADELPHIA DA'S OFFICE DISCRIMINATES AGAINST AMERICAN DEFENDANTS**

Americans who plead guilty to a crime may not be subject to removal from the United States. But they are just as likely as aliens to encounter a number of serious collateral consequences resulting from a criminal conviction. They may lose their driver's license. They may be fired from a job. They may be denied child custody. They may be required to register with parole authorities and submit themselves to ongoing drug and alcohol testing. However, prosecutors' offices rarely, if ever, take special steps to minimize these consequences when defendants are U.S. citizens. And we are unaware of any DAs offices that employ special attorneys solely to insulate citizen criminal defendants from the effects of their criminal behavior. In short, Americans found guilty of a crime are expected to accept any side effects of their conviction as a presumed consequence of having violated the law.

But DA Krasner's policies effectively establish two separate standards of culpability in criminal cases. American defendants in Philadelphia are charged based on the nature of the crimes they are accused of committing, the requirements set forth in the Commonwealth of Pennsylvania criminal code and the quality of evidence available to prosecutors. On the other hand, alien defendants accused of serious crimes are charged with lesser offenses in order to help them try and avoid deportation. They're not charged according to the severity of their offense, under

the relevant provisions of Pennsylvania’s statutes; tried and convicted; then punished accordingly. Rather, they are treated more leniently, solely on the basis of their lack of U.S. citizenship.

The criminal justice system should provide a uniform standard applicable to anyone in a particular jurisdiction. And plea bargaining should serve as a tool for conserving scarce judicial resources. But DA Krasner has transformed the entire criminal process into something opportunistic aliens can use to negotiate away the immigration consequences of their criminal behavior. This warped application of the criminal law places Americans in a less advantageous position than foreign nationals – and rewards foreigners for committing crimes in the United States.

### **DA KRASNER IS ABUSING PROSECUTORIAL DISCRETION**

Because they decide who to charge and what crimes they’ll be prosecuted for, DAs exercise significant power over the manner in which the criminal justice system operates. As [City Journal](#) has put it, “When a prosecutor charges a defendant with a crime, the U.S. Constitution and rules of criminal procedure establish a series of checks and balances that act to constrain the powers of the prosecutor (for example, indictment or preliminary-hearing requirements, the exclusionary rule for illegally obtained evidence, appeals, and so on). But virtually no limitations [exist] on decisions not to prosecute a defendant, regardless of the facts or the law.”

This power is known as “prosecutorial discretion” and it is typically exercised on a case-by-case basis. It keeps DAs from being forced to go to trial before they have sufficient evidence to sustain appropriate criminal charges. And it allows them to refrain from prosecuting a defendant in cases where, although legally proper, the outcome would be morally unjust. It is not, however, an unbridled authority that permits a DA to refrain from prosecuting anyone charged under any statute that he or she happens to personally disagree with. Nor does it permit a prosecutor to avoid prosecuting a criminal because a conviction might trigger consequences under some other body of law with which the prosecutor disagrees.

It’s neither appropriate nor lawful for DA Krasner to unilaterally declare the INA – or any other federal law – null and void in his jurisdiction. Yet, that is exactly what he is attempting to do. Krasner’s blatant manipulation of the criminal justice system in order to protect criminal aliens from deportation is a flagrant abuse of his authority. Mr. Krasner cannot single-handedly prioritize the interests of foreign criminals over the will of the American people, as expressed by Congress in the provisions of the INA.

## CONCLUSION

When he was sworn into office, Philadelphia District Attorney Larry Krasner [took an oath](#) to support and defend the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania, and the Home Rule Charter of the City of Philadelphia. What he has done instead is abandon his oath, showing contempt for all three of the aforementioned documents.

Following a pattern set by Soros-funded, anti-borders prosecutors, Krasner has twisted the criminal justice system to give special preference to any defendant who is not a U.S. citizen. And, in so doing, he unilaterally nullified the Pennsylvania Criminal Code (by refusing to prosecute aliens for the crimes they committed) and the Immigration and Nationality Act (manipulating criminal charges to keep aliens out of Immigration Court).

Even worse, Krasner accomplished his suspect agenda by lying to his constituents, promising that only foreign nationals accused of minor crimes would get any special consideration – when all evidence shows that even a foreign murderer and rapists have been given special treatment by Krasner’s office.

The United States has an adversarial justice system. In order for it to function properly, prosecutors should prosecute, defense attorneys should defend, and judges should judge. Whenever the lines separating those distinct roles becomes blurred, the entire system is compromised.