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Troutman Pepper Locke Achieves Pro Bono Victory in Important Immigration Case

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PHILADELPHIA – Troutman Pepper Locke secured a significant pro bono victory in the case of *Ndungu v. Attorney General*. The U.S. Court of Appeals for the Third Circuit issued a precedential opinion on Jan. 13, 2025, ruling that convictions for fleeing or eluding the police are not removable crimes involving moral turpitude (CIMTs).

Philadelphia counsel [Chris Healy](#) argued the case before a 14-judge en banc sitting of the Third Circuit last October.

The case had followed an unusual path. It was initially argued before a three-judge merits panel in January 2023, before Troutman Pepper Locke's involvement. The case remained pending, with no decision, until May 2024, when the Third Circuit took the rare step of ordering a rehearing en banc *sua sponte* — that is, prior to issuing a decision and without any party requesting rehearing. At that time, Healy joined as co-counsel to assist in briefing and arguing the case before the en banc court.

The case concerns the so-called 'categorical approach,' which federal courts apply to determine whether a prior criminal conviction triggers immigration consequences. After a lawful permanent resident or other noncitizen has been convicted of a crime and served their sentence, they may later face immigration consequences, such as deportation, because of the conviction. To determine whether the prior conviction triggers immigration consequences, courts compare the elements of the prior state crime of conviction with those of an offense listed in the federal immigration laws. If the elements are the same, then there is a 'categorical match,' and the prior conviction may trigger deportation; if the elements are different, then there is no categorical match, and thus no immigration consequences. The same categorical methodology applies in federal criminal cases when courts have to determine whether a prior conviction triggers a sentencing enhancement.

Under long-standing Third Circuit law, courts conducted this analysis as a straightforward question of statutory interpretation. The Third Circuit took this case en banc to consider adding a factual inquiry into how prosecutors exercise their discretion, under which noncitizens would be required to prove how states choose to enforce their criminal laws. Locating such evidence, to the extent it exists, would be beyond the ability of most noncitizens, many of whom are detained during removal proceedings, and the great majority of whom are not represented by lawyers.

Healy presented oral argument on Oct. 9, 2024. The court's questioning revealed how complicated implementing such a new regime would be. Ultimately, the court decided to leave its long-standing precedent in place, remanding the case back to the three-judge panel that initially heard the case. The panel, consisting of Judges Phipps, Jordan, and Roth, issued a precedential decision that affirmed and clarified existing law, under which the client's convictions are not removable CIMTs.

This decision not only secured a win for the client but also preserved important, well-established principles. In addition to Healy, the team included Troutman Pepper Locke associates [Kaitlin O'Donnell](#), [Christy MacGregor](#), and Sierra Stockley, who played a crucial role in this victory.

"I am very pleased with the court's decision, which resulted in our client's release from immigration detention, where he has been for five years," said Healy. "I'm also grateful to my colleagues at Troutman Pepper Locke. Kait, Christy, and Sierra provided superb research and writing assistance on the brief, and many others helped me prepare by participating in moots."

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