

# The Georgia Defender



### Points of Interest:

- Editors' email:  
aclark@gslaw.com and  
foshodges@justiceingorgia.com
- GACDL phone:  
404-248-1777
- GACDL P.O. Box 29653  
Atlanta, GA 30359
- Website: [www.gacdl.org](http://www.gacdl.org)

### Inside this issue:

*We are Defenders – Different  
Playing Field, Same Team.* . . . 1, 5

*New Members* . . . . . 2-3

*2017 CLE* . . . . . 4

*GACDL Seminar Review:  
2017 DUI Boot Camp* . . . . . 6

*Immigration and Criminal Law  
in the Trump Administration:  
A Primer* . . . . . 7-9

*When The Time Comes to Hire  
An Investment Advisor* . . 11-13



## We are Defenders – Different Playing Field, Same Team

By Jessica Stern and Laura Glass-Hess of STERN Law, LLC

**A**s defense attorneys, we know that our non-U.S. citizen (USC) clients can face life-changing consequences because of a criminal conviction. We have been told over and over, that a case resolution otherwise successful for a U.S. citizen, like 1st offender or some other sweet deal, may be the nail in a non-USC's coffin. We are warned that our performance may earn our client a trip back to a country he barely knows, or even one he fears. Unfortunately, this is often the case. As the list of offenses that expose a non-citizen to removal gets longer, the stakes in the criminal process are now higher than ever.

There is a lot of anti-immigrant rhetoric, a lot of talk about "criminal aliens," flooding the airwaves right now. President Trump's recent address to Congress called for the creation of a national database of non-USC criminals; and his January 25th executive order calls for maintaining data on the immigration status of those in federal and state detention.<sup>1</sup> In Georgia, the 2017 legislative session featured the widely supported HB 452 – intended to report non-USC's convicted of violent offenses to the GBI on a registry similar to that for sex-offenders.<sup>2</sup>

While immigration enforcement used to focus on those who committed certain categories of crimes, President Trump's recent orders have expanded the targets for removal. Specifically, Trump's January 25th order sweeps in undocumented folks convicted for an offense *of any kind*, those *charged* with any criminal offense (even while the case is pending), and those *merely suspected* of committing an act that constitutes a chargeable criminal offense.<sup>3</sup> This effectively means there are no longer immigration priorities—all people unlawfully present in the US are at risk.

So what does this mean for our defense of the undocumented and legal residents? Any time that a client faces custody, there is a more-than-ever increased danger of ICE apprehension and targeting for removal. For clients who have no legal status at all, even a very brief time in jail likely will result in an ICE hold and further removal proceedings before an Immigration Court. ICE has begun to arrest people inside courthouses when they appear criminal *and* civil matters. They have

*Continued on page 5*



## New Members

**Jefferson Adams**  
(Mcdonough) 770 369 6010

**Andria Allen**  
(Statesboro) 912 764 6292

**Howard W. Anderson**  
(Pendleton) 864 643 5790

**Sarah V. Armstrong**  
(Clarksville) 706 754 6427

**William Atkinson**  
(Jasper) 706 693 6673

**Caleb Avraham**  
(Lawrenceville) 404 448 1438

**Jeremy F. Babb**  
(Monroe) 770 788 3750

**Gregory Bailey**  
(Douglasville) 404 397 1975

**Jesse Block**  
(Cartersville) 770 387 4529

**Lindesy M. Brown**  
(Columbus) 706 225 3841

**Kindall E. Browning**  
(Perry) 478 218 4870

**Bianca Calloway**  
(Smyrna) 706 495 5223

**Jorge Carabajal**  
(Thomaston) 706 647 7020

**Charlotte H. Carter**  
(Atlanta) 404 658 6838

**Kevin Charles**  
(Winder) 770 307 3006

**Tamisha Cooke**  
(Macon) 478 445 8100

**Danielle Cordova**  
(Brunswick) 912 554 7072

**Drew Crumpton**  
(Toccoa) 706 886 0200

**Ronald Daniels**  
(Perry) 478 227 7331

**Terrell Dark**  
(Atlanta) 404 658 6838

**Lindsay Dark**  
(Atlanta) 404 612 5200

**Tracy Dorfman**  
(Atlanta) 404 812 4300

**Doron Dvorak**  
(Perry) 478 218 4870

**Cheryl Freeman**  
(Covington) 404 955 8183

**Cristiana Giannini**  
(Decatur) 404 371 2222

**Austin Gower**  
(Columbus) 776 324 5685

**Jeffrey Grable**  
(Marietta) 770 685 3312

**Stephen Gurr**  
(Gainesville) 770 718 5523

**Walton “Chip” Hardin, Jr.**  
(Washington) 706 678 4404

**Joshua Zane Harmon**  
(Jefferson) 706 387 6317

**Muhsin Hassan**  
(Atlanta) 470 334 2101

**Doug Hendy**  
(Snellville) 770 241 5597

**Shantay Hightower**  
(Moultrie) 229 616 7070

**John W. Hollins, III**  
(Atlanta) 404 658 6838

**Robert Homlar**  
(Evans) 706 831 0859

**Matt Hoskins**  
(Cartersville) 678 721 3254

**Christopher Howard**  
(Winder) 770 307 3006

**Robert D. James, Jr.**  
(Atlanta) 404 525 8000

*Continued on page 3*



## New Members

**Brock Johnson**  
(Gainesville) 770 718 5523

**Leslie S. Jones**  
(Athens) 706 224 0321

**Famah Fatu Keili**  
(Atlanta) 404 658 6838

**William N. Kelbaugh**  
(Decatur) 404 371 2222

**Zachary Kelehear**  
(Atlanta) 404 460 4500

**Melissa Kirby**  
(Ringgold) 706 764 6313

**Adam Land**  
(Athens) 706 548 1151

**Alan Levine**  
(Marietta) 770 870 4994

**Ashanti A. Lilley**  
(Augusta) 706 722 4283

**Joshua Lingsch**  
(Atlanta) 404 612 5200

**Richard Wells Littlefield, III**  
(Brunswick) 912 554 7072

**Sierra Luckey**  
(Duluth) 678 510 6134

**Kaylee E. Maxwell**  
(Covington) 770 788 3750

**William Maxwell**  
(Dahlonega) 706 429 7829

**Laura Mayfield**  
(Suwanee) 770 271 5244

**Nicole McArthur**  
(Marietta) 770 428 2433

**Timothy McCalep**  
(Atlanta) 404 988 5809

**Timothy McCubbin**  
(Atlanta) 7025951840

**Ian McCutchen**  
(Carrollton) 770 830 1323

**Ashley McMahan**  
(Atlanta) 770 656 1816

**Elisabeth Mienkwic**  
(Rome) 706 232 4743

**Jonathan Miller**  
(Brunswick) 912 264 6662

**Kendra Mitchell**  
(Atlanta) 404 281 5108

**Ernest Montgomery**  
(Athens) 706 510 8540

**Titus Nichols**  
(Evans) 706 722 2014

**Richard Panachida**  
(Norcross) 404 902 6004

**Nicolas Parkerson**  
(Marietta) 478 230 3233

**Tanya Partee**  
(Norcross) 304-376-1984

**Noemi Puntier**  
(Norcross) 404 902 6004

**Katherine Racz**  
(Atlanta) 404 612 5200

**Joseph Roesch**  
(Fayetteville) 770 716 4340

**Clarissa Saintflex**  
(Valdosta) 229 671 2800

**Nicholas Salazar**  
(Chamblee) 470 223 4832

**Nyonnohweah Seekie**  
(Macon) 478 621 5950

**Anne Marie Sgarlata**  
(Atlanta) 503 730 1380

**T. Blake Skipper**  
(Dalton) 706 876 1576

**Brittany Smith**  
(Jasper) 7066936673

**Gilbert Sperling**  
(Atlanta) 678 249 9845

**Howard Steele**  
(Atlanta) 770 490 8841

**Villy S. Stolper**  
(Conyers) 770 918 9914

**Joseph Summer**  
(Gainesville) 770 535 1700

**Alexander Taroff**  
(Atlanta) 908 752 3411

**Joshua Teague**  
(East Ellijay) 706 276 3636

**Terrell Thomas, II**  
(Atlanta) 404 658 6838

**Bryan Tyson**  
(Atlanta) 404 795 2440

**Leanna Wade**  
(Calhoun) 706 263 0553

**Karla L. Walker**  
(Valdosta) 229 247 4617

**Jay G. Wall**  
(Woodstock) 678 362 3176

## 2017 CLE!

Information about GACDL Seminars can be found on our website: [www.gacdl.org](http://www.gacdl.org). *Information is shown online as soon as it is available. Don't see a schedule online? Then the program directors have not yet released it.*

**GACDL's Annual Spring Seminar** will be held on the beach at the Westin Jekyll Island April 27-29, 2017.

### Social Events:

- Cocktail Party overlooking the beach compliments of our sponsor Free At Last Bail Bonds!

- Volleyball on the beach (with music and drinks!) compliments of our sponsor LexisNexis!
- The Island Scavenger Hunt on the GACDL App compliments of our sponsor attorney Walt Britt!
- Golf Outing! (Please contact Delisa Williams if you want to play)
- Fun Run! (or walk) GACDL President-elect Scott Key is the point person for this!

**There is a great pool with a bar** overlooking the ocean! Come and hang out with your friends in GACDL!

Seminar Directors are Russ Hetzel and LaToya Bell. Schedule is online at [www.gacdl.org](http://www.gacdl.org)

**The 18th Annual Bill Daniel Trial Advocacy Program** will be held at the UGA Center for Continuing Education in Athens, GA October 4-7, 2017. This program is designed for members with limited trial experience. Jill Travis is the program director. Applications go online soon so please watch the website for those. We announce applications on GACDL's Facebook page and Listserv.

**GACDL's Annual Fall Seminar** will be held at Brasstown Valley Resort in Young Harris, GA on November 3 & 4, 2017. More information to be announced. Mark your calendars now!

## CLE NOT SHOWING UP ON THE STATE BAR WEBSITE?

The State Bar's website is still showing CLE that you completed in 2016. Their website does not roll over to show CLE completed in 2017 until April 1. This April 1 date is the same each year. If you have questions about whether or not the State Bar has uploaded your CLE hours that we sent to them between January and April 1 of each year, you will need to call them.

GACDL has 30 days to send CLE in to the bar after each seminar. We typically send it in to the bar within 2 weeks after a seminar. If you have a question about whether or not you paid for CLE, feel free to ask GACDL. If you paid, we sent it in to the bar for you.

As long as you have completed the CLE hours that you need by your deadline, you are fine. Even if the CLE wasn't sent to the bar by your deadline, or they don't show it on their website by your deadline—that does not matter. What matters is that you get your hours in before your deadline. If you paid us for CLE and the bar says that they did not receive it, please let us know. We hope that this helps!



## GACDL Merchandise Now Online!

Some members have asked about purchasing GACDL t-shirts and other merchandise online. Some items are now available on our website (*while supplies last!*) [www.gacdl.org](http://www.gacdl.org)



### 2017 GACDL MEMBERSHIP MARK

Want to let the world know that you are a GACDL member?

The 2017 membership marks are available now!

Email [brandie@gacdl.org](mailto:brandie@gacdl.org) and ask for one.

## We are Defenders – Different Playing Field, Same Team *Continued*

raided homes based on pending court case records alone, sometimes using ruses to talk their way into houses often of families with USC spouses and children. Given all this, it is more important than ever to ensure that non-USC clients know that the U.S. Constitution applies to each and every person within our borders—that *anyone* can keep his/her door closed when the government shows up without a warrant; that *anyone* can refuse questioning and remain silent.

But perhaps more importantly, defense lawyers and their clients should know that many people in removal proceedings actually have a way to fight their removal. Detention does not always equal deportation. There are generally four scenarios in which a person in removal proceedings might have an avenue of relief:

1. Client has been present in the U.S. for at least 10 consecutive years (or 7 years for legal permanent resident with slightly different requirements than herein listed) AND has a qualifying U.S. citizen or permanent resident family member (parent, spouse, or child) AND does not have any disqualifying convictions (theft, drugs, violent offenses, aggravated felonies, etc. (DUI is okay)).
2. Client's spouse is a US citizen AND client entered U.S. with a visa AND does not have any disqualifying convictions (theft, drugs, violent offenses, aggravated felonies, etc. (DUI is okay)).
3. Client can prove (with strong evidence) that their country conditions support a credible/reasonable fear of persecution/torture specifically because of race, religion, political opinions, nationality, or membership in a particular social group. (Note: general civil unrest or violence in a country is not enough to qualify for this defense).
4. Client has been the victim of a (typically violent) crime in the U.S. that they have reported to the police and continued to cooperate with the prosecution process.

If your client's circumstances fit into any of these scenarios, encourage them to seek the advice of an experienced immigration attorney whenever possible. A person in removal often has little to lose by fighting their deportation—a situation comparable to a defendant facing an unreasonable prosecutor, but without the “trial tax” that motivates many to plead guilty. In many cases, non-USC clients are fighting for their lives in a very real way; deportation may mean the loss of a life they have struggled for years to build.

In this new world of relentless enforcement, attorneys have a chance to be heroes and defenders of the vulnerable like never before. Through coordinated, thoughtful representation, we can continue to make a difference for our clients.



JESSICA STERN is the owner and managing partner of the CrImmigration™ law firm, STERN Law, LLC. As a former public defender in the Atlanta and work with a well-respected federal criminal defense firm, she blended years of experience defending clients in criminal court with her competing passion to help non-citizens properly understand the immigration implications of their criminal case. While Jessica will always represent folks charged with crimes and in post-conviction matters, her practice now focuses exclusively on the defense of immigrants. She has mastered the

challenging practice of deportation defense and deeply enjoys helping families achieve immigration status through the immigration process.

Jessica serves the City of Atlanta on its Board of Ethics and is a proud LEAD Atlanta '17 alum. She was appointed to the Atlanta Bar Association's (ABA) Judicial Selection and Tenure Committee, is the past Chair of the ABA Criminal Law Section and served on the board for the Women in the Profession Section for two consecutive terms. Jessica graduated in 2008 from Northeastern University School of Law in Boston, MA and currently lives in Midtown, Atlanta.

LAURA GLASS-HESS joined STERN Law in February 2017. She has worked passionately to protect the rights of the accused and vulnerable since graduating from UGA Law School in 2007. Laura spent 8 years in Arizona, representing farmworkers on the U.S.-Mexico border and serving as a public defender in Phoenix where she consistently maintained a winning trial record. Through living and working in a county known for anti-immigrant policies, Laura saw the direct impact of brutal criminal laws and harsh immigration enforcement on families and communities. Committed to justice internationally, Laura worked in Peru with a non-profit that represents child victims of sexual violence, and she has trained Mexican attorneys in trial advocacy. After moving back home to Georgia, Laura continued her work as a public defender in Atlanta before expanding her practice into CrImmigration™ defense where she will leverage her experience to strategically defend immigrants in difficult situations.

1 Trump, Donald, *Executive Order: Enhancing public safety in the interior of the United States*. Jan 25, 2017.

2 Note that a small, eligible group of twenty was the motivation for this registry program. And, believe it or not, data tells us that immigrants are much less likely to commit crimes than the native-born. Census data from the past four decades show that the native-born are consistently incarcerated at rates two to five times higher than immigrants. Ewing et. al, *The criminalization of immigration in the United States*. American Immigration Council (2015)

3 Trump, Donald, *Id.*

# GACDL Seminar Review: 2017 DUI Boot Camp

by Jennifer Koehler Mackall, Executive Director GACDL

**G**ACDL held its 4th DUI Boot Camp March 3 & 4, 2017, live and in-person at the State Bar headquarters in Atlanta, and by live telecast in Savannah and Tifton. Program directors for the seminar were

GACDL Life Member, William C. "Bubba" Head, from Atlanta, and GACDL Sustaining Member, Suesan Miller, from McDonough. Seminar participants enjoyed two days of intensive

training on DUI defense, provided by DUI practitioners and experts from all over Georgia and beyond.

GACDL member, Ashley Schiavone, started Friday's session off by speaking on ALS Hearings: "How to Lose, How to Win, and How to Talk to Your Clients." The second speaker of the day was Georgia Public Safety Training Center (GPSTC) police trainer, James Harper, who taught the "Science of HGN as Seen Through the Eyes of a Police Officer." Mr. Harper conducted Horizontal Gaze Nystagmus demonstrations for everyone. Next Department of Driver Services (DDS) attorney, Vicki Judd, spoke about the "Top Ten DDS Landmines and How to Avoid Them."

Attendees had a working lunch where they learned how to cross examine a police officer. This was led by former GACDL Vice President, Cris Schneider, of Savannah. Finally the program directors wrapped up the day with powerful presentations about defending clients with multiple DUIs, understanding new laws around implied

consent, and discovering a new path to victory in DUI cases.

On Saturday, attendees chose one of three different break out rooms based on their experience levels. Bubba Head ran the Advanced group. The Intermediate



(left to right) Suesan Miller, Janine Arvizu, and William C. "Bubba" Head

group was led by Cory Yager, a former police officer who now practices DUI defense with Bubba. And Suesan led the Beginner group, with the help of GACDL Vice President,

Brad Moody, also of McDonough. Bubba and Suesan invited experts from all over the country to teach all three rooms. Many of the speakers appeared via computer, thanks to technical support from Cory Yager and State Bar employee, Kyle Gause.

The special guest speaker of the weekend was Janine Arvizu who flew in to Atlanta from New Mexico to speak about blood reports in DUI cases. Janine is a chemist who now analyzes forensic data. She was featured on the Netflix series, "Making of a Murderer," and even has her own Meme on BuzzFeed, which you can see on the GACDL Facebook page.

Other experts on Saturday included Thomas Workman, Dr. Randall Tackett, Pharm. D., Dr. Stefan Rose, M.D., Jan Semenov, Dr. Joe Anderson, Ph.D., Dr. Greg Kane, M.D., Dr. Surgeon Dole, Ph.D., Dr. Jimmie Valentine, B.S., B.S., M.S., Ph.D., Ron Lloyd, and Anthony Palacios. GACDL member, Mike Hawkins, also came in to do a demonstration with Ron Lloyd, especially for the Beginner group.

On Saturday morning, we learned it was Bubba's birthday. So GACDL membership director, Brandie Martinez Bedard, ran out and purchased six large birthday cakes. Everyone celebrated Bubba's birthday by singing happy birthday to him, and grabbing some cake with their lunches. Bubba was completely surprised.

GACDL does the DUI Boot Camp seminar every three to four years. Parts of the seminar were recorded. Bubba is working with GACDL to evaluate whether or not GACDL can offer the recorded portions on another date this year. If GACDL is able to re-run any of it, we will notify members via the Listserver and on the GACDL Facebook page.

In the meantime, if you would like the voluminous seminar materials (including four court transcripts!), contact GACDL to find out how to purchase them. It is a massive amount of information, and incredibly valuable for DUI practitioners.

According to verbal feedback and written evaluations, the seminar was well received. You can see GACDL Vice President, Arturo Corso, from Gainesville, speaking about the DUI Boot Camp on GACDL's YouTube channel, or by clicking on the link [HERE](#).

GACDL would like to thank all of our attendees for supporting this seminar and this group. Thanks again to Bubba, Suesan, Cory, and all of the speakers and attendees for another successful DUI Boot Camp.

– Jennifer Koehler Mackall,  
Executive Director GACDL



This is Jennifer Koehler Mackall's 14th year directing the GACDL. She is the third executive director of the association, and the longest running. Jennifer believes that quality CLE programs are of paramount importance for GACDL members and their clients. Her goal is for GACDL to provide the best CLE programs available anywhere for Georgia's criminal defense lawyers. Jennifer is the mother of two sons and lives in Atlanta with her husband Parker.

# Immigration and Criminal Law in the Trump Administration: A Primer

by Fakiha Khan, Esq. and Kendra Mitchell, Esq.  
*The Law Offices of Fakiha Khan, P.C.*

There has always been an uncomfortable intersection between criminal practice and immigration law. Perhaps the Supreme Court's decision in *Padilla v. Kentucky* best exemplifies the need for criminal defense attorneys to have a working knowledge of immigration law as it intersects with criminal law. In *Padilla*, the Supreme Court held that a defendant who had pleaded guilty was entitled to post-conviction relief based on ineffective assistance of counsel, because counsel did not inform the defendant of the possibility that he could be deported as a result of his guilty plea. The Court noted that recent immigration law reforms had expanded the class of aliens who could be deported following a criminal conviction and explained that, while deportation is technically a civil penalty, it is nonetheless "intimately related to the criminal process."<sup>1</sup> Thus, the Court held that *Padilla's* attorney was obligated to inform his client that, by pleading guilty, *Padilla* was almost certain to be deported.

Immigration reform again has taken center stage for criminal defense attorneys. In addition to making waves with the much publicized, so-

called, "Travel Ban," the Trump Administration has indicated a desire to increase deportation of aliens engaged in criminal activity, and has begun immigration raids in various cities. Many criminal defense lawyers will represent clients who are facing these issues. For them, it is essential to understand how current and developing immigration rules and practices under the Trump administration may impact their practice and their clients' lives.

One of the first things to remember is that "aliens" is a large category, and goes beyond who we typically think about in the current immigration debate. The group includes those who have entered the country illegally by crossing the border without inspection, those who came here legally with a valid visa but are currently here illegally because the visa expired, and those who are here legally under a valid immigrant or nonimmigrant visa. This means that anyone from an undocumented worker to a childhood arrival to a visitor and even a legal permanent resident is an "alien,"



subject to removal. Technically, an alien can be placed in removal proceedings for violating any immigration rule; but the vast majority of those deported are those who have violated criminal laws.

Under current immigration rules, an alien who is convicted of a crime involving moral turpitude ("CMT") within 5 years (or 10 years for a legal permanent resident ("LPR")) after admission and who is convicted of a crime "for which a sentence of one year or longer may be imposed" is deportable.<sup>2</sup> In addition, any alien who is convicted of two or more CMTs, not arising out of the same scheme of criminal conduct, is deportable. Notably, CMT is not clearly defined

Immigration Law

## Immigration and Criminal Law *Continued*

in the Immigration and Nationality Act (“INA”); but it is generally agreed that crimes involving fraud, theft, intent to harm, and larceny fall in the category of CMT. According to the Board of Immigration Appeals, a CMT is nebulous, referring to crimes that “shock the public conscience,” that are “inherently base, vile, or depraved,” committed either with an “evil” intent or recklessly.<sup>3</sup>

An alien also may be deported if convicted of an “aggravated felony.” A crime does not necessarily fall into the category of aggravated felony merely because it is a felony with an “aggravated” element under state law. Rather, an aggravated felony for purposes of immigration law is, *inter alia*, (1) murder, rape, or sexual abuse of a minor; (2) illicit trafficking in a controlled substance; (3) illicit trafficking in firearms or “destructive devices”; (4) an offense involving money laundering; (5) a “crime of violence” as defined in 18 U.S.C. § 16; (6) a theft offense (including receipt of stolen goods) or burglary offense for which the term of imprisonment is at least one year; (7) an offense relating to demand or receipt of ransom; (8) an offense relating to child pornography; (9) an offense relating to a failure to appear in court pursuant to answer or dispose of a charge of a felony for which a sentence of two years or more may be imposed, etc.<sup>4</sup>

It can be extremely difficult to know if a particular criminal offense will qualify as a CMT or aggravated felony. Indeed, the definition of aggravated felony includes 18 separate subsections. Similarly, as discussed above, CMT is also a “nebulous” concept that potentially includes hundreds of offenses. Further, the categorization of a crime as a CMT or an aggravated felony turns on both the elements of the crime under state law and on the intent of the actor. And it is not necessarily the severity of the crime that leads to its categorization as a CMT or aggravated felony.

For example, a “crime of violence” under federal law is one that “has as an element the use, or attempted use,

or threatened use of physical force against the person or property of another,” or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.<sup>5</sup> Thus, while all such “crimes of violence” are aggravated felonies for immigration purposes, they may not be “aggravated” crimes under state law.

Similarly, a defendant need not have been convicted and *sentenced* to a term of one year or more to have been “convicted of a CMT” under immigration rules, as long as under state law, the crime is *potentially* punishable with a sentence of one year or more.

For any criminal defense attorney, it is vital to consider how and to what extent a crime under Georgia law may be classified as either a CMT or an aggravated felony for immigration purposes in order to give the clearest answer to a client about the full extent of possible consequences arising out of conviction. In Georgia, the list of crimes likely to be considered Aggravated Felonies or CMT’s would certainly include the “Seven Deadly Sins” of murder, rape, aggravated sodomy, armed robbery, kidnaping, aggravated child molestation, and aggravated sexual battery. But under the federal definition of “aggravated felony,” it could include aggravated assault and possibly other offenses as well.

Defense practitioners may advise their clients to offer a guilty plea pursuant to *North Carolina v. Alford* such that the client pleads guilty to the charged offense, but technically maintains his innocence.<sup>6</sup> While such a plea may allow a client to continue asserting his innocence of the crimes charged against him, it likely would still qualify as a “conviction” for immigration purposes. In fact, under federal immigration rules, a “conviction” arises from both a guilty plea and where a defendant offers a “plea of nolo contendere or has admitted



sufficient facts to warrant a finding of guilt.”<sup>7</sup> Thus, an Alford plea would not save a client from the immigration consequences of his guilty plea.

Moreover, immigration rules specifically state that “a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.”<sup>8</sup> Thus, even a suspended sentence is a “sentence” for purposes of rules involving deportation and removal.

The foregoing explanation of CMTs and aggravated felonies is to inform criminal defense practitioners of the numerous moving parts involved in an immigration law analysis of how a conviction will affect a client. As outlined by *Padilla*, every practitioner must inform the client of the immigration consequences of a guilty plea; but in reality, such advice is not truly effective without a working knowledge of some of the rules outlined above. Of course, time and resources often make it difficult for practitioners (particularly solo practitioners) to be able to conduct an in-depth immigration analysis while also being able to keep up with the demands of a thriving criminal practice. Moreover, as the new administration issues additional immigration rules, the demands on criminal defense attorneys to keep up with those rules expand exponentially.

For example, the latest immigration rules and international USCIS policies issued by the White House greatly



# Immigration and Criminal Law *Continued*



into partnerships with ICE under a joint Memorandum of Agreement (MOA), in order to receive delegated authority for immigration enforcement within their jurisdictions. At present, only the Cobb, Gwinnett, Hall, and Whitfield Sheriff's Offices have signed a memorandum authorizing immigration enforcement, and they do so at their respective county jails.<sup>10</sup>

expand who may be deported and when. Indeed, the administration has directed Immigration and Customs Enforcement ("ICE") to more aggressively find and apprehend criminal aliens and to deport them even if they have not been convicted of serious crimes.<sup>9</sup> Another key component of the new directives is to rely on local law enforcement to identify "criminal" aliens and to coordinate with ICE in detaining and deporting such aliens. It is unclear how and whether local law enforcement will play a part in the enforcement of immigration rules. The 287(g) program, an ICE partnership initiative, allows state and local law enforcement entities to enter

While we await more information about how the new rules and policies will be implemented, it is essential for criminal defense attorneys to remain vigilant about protecting the constitutional and due process right of their alien clients. To that end, we encourage criminal defense practitioners to attend Immigration CLE's and to cultivate relationships with attorneys knowledgeable in immigration law. Georgia criminal defense attorneys must have some working knowledge of immigration law so that they can both properly advise their clients and avoid an ineffective assistance claim under *Padilla*.



**Fakiha Khan** is a lawyer in private practice in Johns Creek, Georgia. She specializes in family law, immigration, appeals, and mediation.

She graduated from The University of Georgia School of Law. She can be reached at [fakiha@fklawoffices.com](mailto:fakiha@fklawoffices.com).

**Kendra Mitchell** is Of Counsel to the Law Offices of Fakiha Khan, P.C. in Johns Creek, where she specializes in criminal defense, civil litigation, and family law. She graduated from Georgia State University College of Law. Kendra can be reached at [kendra@fklawoffices.com](mailto:kendra@fklawoffices.com).



1 *Padilla v. Kentucky*, 130 S.Ct. 1473, 1481 (2010).  
 2 Immigration and Nationality Act ("INA") § 237(a)(2)(A)(i)/18 U.S.C. § 1227(a)(2)(A)(i)  
 3 *Medina v. United States*, 259 F.3d 220, 227 (4th Cir. 2001), quoting *Matter of Danesh*, 19 I. & N. Dec. 669, 670 (BIA 1988).  
 4 18 U.S.C. § 1101(a)(43).  
 5 18 U.S.C. § 16.  
 6 *North Carolina v. Alford*, 400 U.S. 25 (1970).  
 7 18 U.S.C. § 1101(a)(48)(A).  
 8 18 U.S.C. § 1101(a)(48)(B).  
 9 Michael D. Shear and Ron Nixon, "New Trump Deportation Rules Allow Far More Expulsions," *New York Times* (February 21, 2017), available at: [https://www.nytimes.com/2017/02/21/us/politics/dhs-immigration-trump.html?\\_r=0](https://www.nytimes.com/2017/02/21/us/politics/dhs-immigration-trump.html?_r=0).  
 10 Delegation of Immigration Authority Section 287g Immigration and Nationality Act, U.S. Immigration and Customs Enforcement, available at: <https://www.ice.gov/factsheets/287g>.



Please send me a copy of  
**Doug Peters'**  
**"Defense of the Child  
 Molestation Case in  
 Georgia"** manual.

(Enclosed is my check payable to  
**GACDL for \$100)**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/STATE/ZIP \_\_\_\_\_

Please mail this form and your check to:

**GACDL  
 P.O. Box 68  
 Decatur, GA 30031**

# The Georgia Association of Criminal Defense Lawyers

proudly announces the

## 18th Annual Bill Daniel Trial Advocacy Program

October 4-7, 2017

UGA Center for Continuing Education Athens, Georgia



*This prestigious program will accept 30 GACDL members with limited trial experience. Program cost includes: trial skills training with a nationally recognized group of faculty, lodging, meals, social events, and an opportunity to earn approximately 22 hours of CLE credits. (Entire program cost is \$1,500 per student.*

*GCDLEF and GACDL scholarships all but \$350 for each student accepted. Student cost is \$350.) This popular program is by application and acceptance only. Apply early! **Application coming soon!***

**For an application please visit [www.gacdl.org](http://www.gacdl.org)**

# When The Time Comes to Hire An Investment Advisor

by Roger Sheffield

*Sheffield Investment Management, LLC*

In my first article for *The Defender*, I introduced a number of important investment concepts, with the overarching theme of mistake minimization as opposed to return maximization. For example, I suggested that in your early professional career, you could self-manage your investment portfolio in the simplest manner possible: purchase a broad-based stock index product with the lowest expense ratio available and just leave it alone to grow of its own accord through dividend reinvestment (This is what Warren Buffett would tell you to do, too!).

Also, I suggested that if you were fortunate enough to have an employer-sponsored retirement plan, you should do whatever you can to take advantage of the employer match for your contributions. It's an easy way to achieve a 100% return on your investment capital.

Generally, I advised you to think like a long-term investor so that you don't get caught up in the constant din of *speculator-type* radio and TV investment gurus who don't know you from Adam. Remember that short-term investment concerns are irrelevant to your long-term retirement wealth-building objectives. Don't forget that you are ultimately responsible for your investment results. Hence you'll want to remain attentive to your performance.

Of course, many people ultimately will reach a point where they want or need professional investment planning and management help. The follow is about what you should think about when that time comes.

I like this recent quote from the acting head of the Securities and Exchange Commission: "If someone calls themselves a financial advisor, it means absolutely nothing."

Why? Because the barriers to entry into the field of financial advising are

practically non-existent. There is an alphabet soup of professional designations that people can obtain to impress you. You must do your homework and be vigilant in your screening to learn about the people behind the letters. You may even have to watch out for the rare, rogue advisor who is out to defraud you.

Unfortunately, it can be quite difficult to discover fraud until after the fact.

Above, I used the words "investment planning and management." *Planning* is a generalized activity that prepares a person to take certain courses of action towards desired goals. Examples include obtaining \$X of life insurance, opening a particular type of IRA account, setting aside money for children's college expenses in a particular type of investment vehicle, etc. *Planning* is a more generalized activity employed to give broad guidance on achieving goals.

*Investment management* means being in the trenches and making investment decisions in the face of "known unknowns" and "unknown unknowns." It implies a deeper understanding of investment characteristics together with analytical capabilities typically acquired in a rigorous academic setting – or, if self-taught, from many years of hard-knock experiences in the investment trenches. It implies a depth of understanding of all aspects of the investment process from portfolio design to measuring risk control to clarity in performance presentations, and adhering to standards of ethical behavior.



I believe picking someone to manage your investment portfolio requires work! An investor needs to be absolutely ruthless in the process of weeding out unworthy advisors. Your decision is on the same level as choosing a brain surgeon, cancer specialist, a worthy spouse, . . . a lawyer (!) . . . a Himalayan Sherpa guide. Your survival (in this case, financial) depends on it.

However, the investment manager selection process can be dramatically simplified when an investor knows the correct questions to ask. What follows is the list of those questions, which I think will help you select a truly qualified investment/portfolio manager (hereafter referred to as "advisor") from the massive numbers of other less-qualified and conflict-prone individuals who are actively soliciting your business. The questions aren't difficult; and you don't have to be extremely knowledgeable about investing to keep yourself out of relationships with bad actors or otherwise inferior advisor choices.

**1. Do you acknowledge in writing to me that you act as a fiduciary to me for the management of my portfolio?**

## When The Time Comes to Hire An Investment Advisor *Continued*

If the answer is “No”, then it’s time to end the interview right then and there and move on! Being a fiduciary means providing the highest standard of care to the client. It implies that the client’s needs and interests come before those of the advisor and his/her employer.

The vast majority of stockbrokers and many financial planners do not ascribe to a fiduciary standard. In non-fiduciary relationships, the advisor represents the interests of his/her employer; and the client, knowingly or unknowingly, takes on the ultimate responsibility for determining the suitability of the investment choices offered by the advisor. The client is on his or her own regarding investment decisions. If you are not truly skilled at investment decision-making, then avoid legal relationships with advisors where the relationship is predicated upon such a level of skill!

### 2. Do you have any record of securities violations?

One violation in the past *might* be excusable, depending upon its severity. More than one indicates a person with whom you don’t want any relationship whatsoever. This information is readily available to investors on the FINRA website [www.finra.org](http://www.finra.org). There are simply too many participants in our industry with unblemished customer relationships to waste time and money on people with checkered histories.

### 3. What is the extent of your investment education and training?

Once you have satisfied yourself that your prospective advisor is going to put your interest ahead of their own, and that person has a clean history without criminal or regulatory misdeeds, it’s time to begin probing their current qualifications and investment practices. The gold standard in investment counseling and portfolio management is to become a CFA charterholder. The CFA (Chartered Financial Analyst) designation entails a rigorous multi-year examination process, incorporating the full body of knowledge relating to the entire investment process. A plethora

of other professional designations exist in the investment field, all of which are less rigorous than the CFA series. Why settle for second best? Inquire whether your prospective advisor is a CFA charterholder. Know that there are many CFA portfolio advisors willing to compete for your business, so there is little reason not to seek out the most knowledgeable candidates.

Second, ask how long the advisor has been actively managing portfolios in the style proposed for you. It takes years of on-the-job experience to gain skill and wisdom. These are qualifications that cannot be mastered by reading a few books or passing a state-sponsored exam. Five years of portfolio management experience should be the bare-bones minimum; 10-years experience is certainly more desirable. It’s very comforting for a client to be told by their portfolio manager, “I’ve been in this situation before.” There is no substitute for “time in the trenches.”

### 4. Do you have an Investment Policy Statement?

Your prospective advisor is to be congratulated if he or she has not been weeded out by the first three questions above. And you as the prospective client didn’t need any investment expertise of your own to find suitably credentialed and experienced candidates!

Now it’s time to explore the prospective advisors’ investment management process. Strange as this may sound to the novice investor, it is my opinion that process is more important than *performance*! Failure to present a well-articulated and transparent investment process leads to A) the investor not understanding how their portfolio will be managed, B) a lack of discipline in the security selection process and, C) typically disappointing investment performance over time.

The best starting point for understanding the investment process is the advisor’s Investment Policy Statement, a document that sets forth many of the key criteria which the advisor considers when building and maintaining client portfolios. A model

Investment Policy Statement (“IPS”) can be downloaded from the CFA website [www.cfainstitute.org/learning/tools/topics/](http://www.cfainstitute.org/learning/tools/topics/) which illustrates many of the things that should be considered when formulating an investment plan.

If a proposed advisor has a one-or-two page document, or even worse, no IPS at all, it’s a clue that it’s time to move on to the next portfolio management candidate! A minimal document is purposefully designed to be vague, potentially leading to client/advisor misunderstandings down the road.

### 5. What types of securities will you acquire for my portfolio?

There are two basic security types or choices for managing client portfolios: individual company securities such as specific stocks and bonds, or security products such as ETF’s and mutual funds (either managed or “index-type,” which are already aggregate collections of individual securities). A segment of the investment industry offers insurance-based products including annuities, but these products contain layers of complexity that go well beyond the scope of this discussion.

A dirty little secret in the portfolio management industry is that advisors sometimes choose certain types of securities for their clients because of their own investment competence, comfort level, or management intensity, and with their own business structure in mind, and not because of what’s best for the client. The thinking of such advisors goes something like this:

*I simply don’t want to invest the time, energy, and money in my business to build portfolios of individual company securities. Besides, my business plan is working beautifully. I have more time to gather client assets, grow my AUM (assets under management), and thus my corporate income. I have no need for a high-priced CFA on my staff, spending all that time and effort on research.*

Is the business model that works best for the advisor automatically the model that is in the client’s best interest? As you will see below, there are implications to the investor based

## When The Time Comes to Hire An Investment Advisor *Continued*

upon the type of securities the advisor acquires. For example, there are incremental cost structures associated with securities products. Things can start to get very technical at this point and I am trying with this article to avoid unnecessary complexity in the advisor selection process. So I simply suggest that you request any prospective advisor to clearly explain the investment process to be employed. Ask the advisor: “Do you invest my portfolio in individual securities, or products?” and, “Why?”

### 6. What are my “all-in” costs if you manage my account?

Virtually all advisors have honed their presentations in a manner that would be difficult for the investor to challenge. Therefore, a legitimate screening criterion that doesn’t require investment acumen on the investor’s part is the cost of services rendered. Investors generally recognize that they have little control over their stock or bond portfolio return once a portfolio is established. The future is unknowable. However, one of the few things that investors do have complete control over are the fees paid for advisory services rendered. In the broadest sense, advisory fees include fees paid to the advisor, fees paid to the custodian, fees paid inside investment products you own, and commissions on securities trades. It is quite simple for the prospective or currently utilized advisor to calculate an all-in fee for a 12-month period, utilizing an assumed portfolio turnover rate.

Every portfolio manager should be able to present an all-in cost analysis of what the client is likely to pay over, say, a 12-month period, given the advisor’s style of investing. What you will learn when comparing advisor fee structures is that there is no uniformity. It is not at all uncommon for advisors with less education and expertise to outsource portfolio decision making activities to other portfolio managers (probably CFA’s), thereby creating an additional level of fees that are paid by the investor. How much will that advisor be charging you to outsource investment decision-making? You need to ask.

Some investment advisors, financial planners, and “wealth management” types, claim to seek out “the world’s best portfolio managers” to manage your investments for you, with the added comforting statement that, “if these people screw up, we’ll fire them and replace them with some other top-performing advisor.” This approach is simply a marketing ploy by advisors who lack portfolio management skills of their own.

Most investors are familiar with the oft-repeated statement, “*past performance is not indicative of future results.*” This idea that investing your money with yesterday’s “top” portfolio managers (and paying an additional layer of fees to your advisor for this service) and expecting comparable outperformance in the future equals a portfolio built on nothing more than wishful thinking. Hope is not a strategy.

Armed with this cost-of-management information, it becomes much easier to compare the cost of services across advisors utilizing different security types for the portfolio they construct. You may be surprised to learn that less-qualified advisors sometimes have higher all-in fee structures than more highly qualified advisors.

### 7. What about portfolio performance and reporting?

Questions about performance can fall to the bottom of this list because performance precipitates out of investment style, process, and fee structure. When the investment process demonstrates discipline and transparency, then acceptable investment performance generally follows.

It is typical in our industry to present clients with a periodic rate of return number and to compare that number to some benchmark index. This is clearly the protocol followed by mutual funds.

But simply reporting a rate-of-return number tells the investor next to nothing about the series of decisions made by the advisor over a selected period. How has the asset allocation changed over time? What are the characteristics of the securities in the portfolio? How often are securities purchased and sold? What amount of portfolio volatility was

incurred with the return generated?

A sign of professionalism in portfolio management is revealed by the depth of the advisor’s reporting capabilities. Clients don’t need to be mathematicians to get a sense of performance reporting capability — just compare the scope of performance information presented from among the advisors interviewed.

### 8. A brief note about advisor websites.

Advisors who are less technically proficient in actual portfolio management policies and procedures gear their websites to focus on general investment concerns such as having enough wealth to live on, or telling you how important asset allocation is, or suggesting that the key to investment success is buying low and selling high. Details about investment process are generally conspicuously absent. What criteria are used to select investments? How are valuation decisions implemented? What does an adequately diversified portfolio look like? These and other probing questions get to the heart of the investment decision-making process. If the advisor’s website is long on feel-good images and messages, and short on investment specifics, you are probably going to be disappointed in your portfolio results.

Quality portfolio managers will seem to ‘bubble up’ to the top of your selection process if you are determined in your efforts, follow the suggestions, and ask the important questions contained in this article.

*Roger Sheffield, CFA, father of GALDL member; Jason Sheffield, is the owner of Sheffield Investment Management, LLC, a Georgia registered investment-counseling firm. Mr. Sheffield has been managing client investment portfolios since 1979 for high net worth families. More information regarding his firm’s investment activities can be found at the company’s website at [www.shefinvestment.com](http://www.shefinvestment.com). The professional designation of CFA stands for Chartered Financial Analyst, considered to be the gold standard of investment professionalism and knowledge. Information regarding this professional designation can be found at [www.cfainstitute.org](http://www.cfainstitute.org).*

GACDL P.O. BOX 68 Decatur, GA 30031

Name: \_\_\_\_\_

Bar Number: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ E-mail: \_\_\_\_\_

10 CLE hours (applied for) 1 professionalism hour,  
1 ethics hour, 4 trial practice hours.  
(Trial practice hours can convert to regular hours.)

**PLEASE CHOOSE ONE OPTION:**

\_\_\_ \$360 I am a regular, contributing, substantial, life (since 2005), public defender, or associate member and I need CLE \_\_\_ \$290 Same and I do not need CLE

\_\_\_ \$0 I am a life member prior to 2005, or a sustaining member and do not need CLE \_\_\_ \$70 Same and I need CLE

\_\_\_ \$280 I am a full-time federal, state, or county employed public defender in the \_\_\_\_\_ Circuit and I need CLE. Every attorney in our office is a 2017 GACDL member. \_\_\_ \$210 Same, but I do not need CLE. (Note: If all PDs in a circuit are not members, please pay regular member rate if you are a member, and pay the non-member rate if you are a non-member. PD rate applies to full-time government employed PDs only.)

\_\_\_ \$650 I am not a member of GACDL.

If you need to pay your 2017 dues to be a member:

\_\_\_ Add \$185 to the seminar price above \_\_\_ Add \$115 to pay PD dues (all dues expire 30 November 2017)

To book your hotel rooms, please call:  
1-912-635-4545. More information about  
the hotel rooms: www.gacdl.org

**The GACDL office will be closed the week of this seminar due to the 2017 Long Range Planning Meeting which is being held earlier that week. Preregistration closes Friday April 21 at noon.**

Please log in as a member at www.gacdl.org to register online. (Log in directions under "help"). If you register online and do not complete the payment process, and do not show for the seminar, you will be billed. If mailing, please mail early and do not send cash. We cannot receive mailed registrations the week of this seminar due to travel.

CLE cannot be authorized without registration, proper payment, and seminar check-in. Paid registrants will receive materials two days before the seminar via email. PLEASE be sure that your email address is correct at www.gacdl.org and please check your inbox and your junk mailbox two nights before the seminar. No cancellations after April 3, 2016. Substitutions are permitted. Questions? Call 404-248-1777

The Georgia Association of  
Criminal Defense Lawyers

P.O. Box 68  
Decatur, GA 30031



THE GEORGIA ASSOCIATION  
of CRIMINAL DEFENSE LAWYERS,  
LaToya Bell, and Russ Hetzel  
Present:

# CHANGING JUSTICE!



**GACDL's Spring Seminar**  
**April 27-29, 2017**  
**The Westin at Jekyll Island**  
**ON THE BEACH!**  
To register online visit  
**www.gacdl.org**



## THURSDAY APRIL 27, 2017

- 11:30 AM **Seminar check-in.**  
*Walk-in registration, add \$20*
- 12:45-12:55 PM **How to Use the GACDL App and Website** - GACDL Technology Chairperson Keith Fitzgerald
- 12:55-1:00 **WELCOME** - GACDL President Angie Coggins and Program Directors LaToya Bell and Russ Hetzel
- 1:00-2:00 **Guilty Until Proven Innocent, My Personal Journey Through the Legal System (Professionalism)** - Don Balfour
- 1:00 *in the lobby* **Staff from the Georgia Parole Board Answering Questions about the Parole Process and Your Clients** - for Registered Seminar Attendees
- 2:00-3:00 **Justice for All: Crimmigration 101 and Executive Order Regime Change** - Ashley Deadwyler-Heuman
- 3:00-3:15 **BREAK**
- 3:15-4:15 **Understanding the Procedural Tools Available to Navigate through a Changing Criminal Justice System: Procedure and Use of Habeas, Mandamus, TROs, and More** - Parag Shah
- 4:15-5:15 **Building Your Case Law Arsenal** - Randall Sharp
- 5:15-5:30 **A Word from Your Party Sponsor** - Free At Last Bail Bonds
- 5:30 **COCKTAIL PARTY at the Westin**  
Sponsored by Free At Last Bail Bonds

## FRIDAY APRIL 28, 2017

- 8:55-9:00 AM **WELCOME** - LaToya Bell and Russ Hetzel
- 9:00-10:00 **Under the Gold Dome: Dispatches on Justice** - Mazie Lynn Causey
- 10:00-10:15 **BREAK**
- 10:15-11:15 **Social Media: Ethics and Not-So-Common Sense** - Heather Riggs
- 11:15-12:15 **Whiplash in the Immigration World: Constant Changes in the New Administration** - Tracy Klinke
- 12:15-12:20 **Inspirational 5!**
- 2:00-4:00 **VOLLEYBALL on the Beach**



## TAKE A CLE VACATION

**Great Hotel On The Beach!**  
**Cocktail Party!**  
**Island Scavenger Hunt!**  
**Volleyball On The Beach!**  
**Golf Tournament!**



## SATURDAY APRIL 29, 2017

- 8:55-9:00 **GREETING** - LaToya Bell and Russ Hetzel
- 9:00-10:00 **Computer Forensic Evidence** - Scott Moulton
- 10:00-10:15 **BREAK**
- 10:15-11:15 **Sex Crimes Defense** - Larry Duttweiler
- 11:15-12:15 **The Business of Criminal Defense** - J. Daran Burns
- 12:15-12:20 **Inspirational 5!**
- 12:20 **Lunch on your own**  
(GACDL Board Meets)

*Remember to join us for the*  
**GACDL Fall Seminar**  
on November 3 & 4, 2017 at  
Brasstown Valley Resort in Young Harris, Georgia



# B A I L B O N D S



OVER  
**50**  
YEARS  
EXPERIENCE

Electronic Monitoring Service  
**Any Jail • Anywhere**  
**Nationwide**

AVAILABLE  
**24 HOURS**  
(EXCEPT SUNDAYS)

**PAYMENT PLANS AVAILABLE**

**FEDERAL BOND SPECIALISTS • CRIMINAL BONDS • TRAFFIC BONDS  
JUVENILE BONDS • APPEAL BONDS**

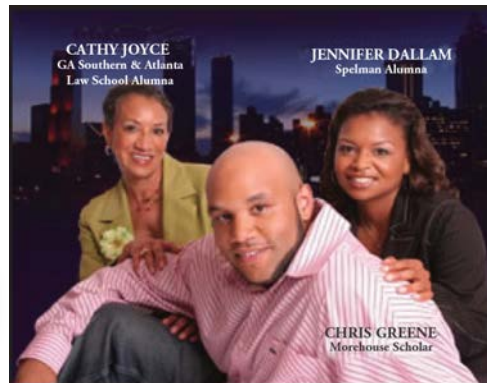
**FAST • CONFIDENTIAL • COMPASSIONATE**

Checks Accepted



Ask about Our Student Discount

Whom the son sets free is free indeed. John 8:36 



Atlanta/ Federal/  
East Point  
**404-577-2245**  
233 Peachtree St. SW  
Atlanta, GA 30303

Clayton County/  
College Park  
**770-471-1284**  
8700 Tara Blvd.  
Jonesboro, GA 30296

Roswell/  
Sandy Springs  
**678-223-3198**  
860 Ellis Street  
Roswell, GA 30075

Dekalb County  
**404-294-1366**  
4717 Memorial Drive  
Decatur, GA 30302

West Georgia  
**770-214-1424**  
626 Newnan Street  
Carrollton, GA 30117

“We Understand The Importance & Urgency of Reuniting Families”

**www.FreeAtLastBB.com**