

REPRESENTING YOUR IMMIGRATION CLIENTS IN COURT

TYPES OF IMMIGRATION CLIENTS

- U.S. Citizens
- Lawful Permanent Residents
- Non-Immigrants
- Undocumented Aliens

Can any of them be deported?

U.S. Citizens

- U.S. Citizen by birth
- U.S Citizen by Naturalization

Birth

No. They cannot be deported unless they have renounced their citizenship

Naturalization

- Yes, but only if the Government is seeking de-naturalization
- De-Naturalization only happens if there was fraud from the moment they became a permanent resident or applied for citizenship

Lawful Permanent Resident (Green Card Holders)

Yes, they can be subject to deportation and placed in immigration proceedings from being found guilty

Non-Immigrants (People Here on a Visa)

Yes. They can have their visas revoked, detained by ICE, and placed in removal proceedings

Undocumented Aliens

Yes. They will be detained by ICE and placed in removal proceedings

Can A Guilty Plea Affect My Client

- Yes, a guilty plea can affect your client's immigration status and forms of relief.
- Two types of crimes will affect your client
 - Aggravated Felony
 - Crime Involving Moral Turpitude

Aggravated Felony

8 U.S.C. 101(a)(43)

- Murder, Rape, Sexual Abuse of a Minor
- Trafficking a controlled substance
- Money laundering
- Possessing, selling, transporting explosives
- Possessing and transporting firearms
- Obstruction of Justice
- Theft/Burglary Offense
- RICO

Crime Involving Moral Turpitude

- What is it?
 - “It depends”



Crime Involving Moral Turpitude

- Definition
 - Moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. Matter of Danesh, 19 I&N Dec. 669 (BIA 1988)
- Moral turpitude is a crime that requires two essential elements: reprehensible conduct and a culpable mental state
 - Vicious motive or a corrupt mind
 - Evil intent
 - Acting recklessly
 - Intending to defraud or deceive

Examples

- Client was arrested and pled guilty to 21 U.S.C. 841(a) knowingly or intentionally possessing cocaine with the intent to distribute
 - Punishable for up to 10 years
 - Knowledge or intent requires a culpable mental state - *Matter of Khourn*, 21 I&N Dec. 1041
- Client was arrested for and pled guilty to Miss. Code Ann. 97-17-43(1) taking, stealing, carrying away any personal property of another under the value of \$1,000.00
 - Misdemeanor punishable up to six months in prison
 - Crime Involving Moral Turpitude – *Matter of Leyva*, 16 I&N Dec. 118
- Client was arrested and pled guilty to 26 USC 7203 willfully failing to file tax return
 - Misdemeanor punishable for up to 1 year
 - “Wilfully” connotes an evil intent – *Matter of W-*, 5 I&N Dec. 759

How Will A Conviction Impact My Client's Status

Depending on the conviction, your client can be deemed inadmissible and/or deportable

Deportable vs Inadmissible

What's the difference

- **Deportable:** Government is trying to kick you out of the country
 - You will be placed in immigration court
- **Inadmissible:** You are trying to enter into the country
 - Person is at the border and seeks to enter into the country
 - The person is in the country (entered illegally)
 - Person applies to become a permanent resident

How Do I Know If My Client Is Deportable or Inadmissible

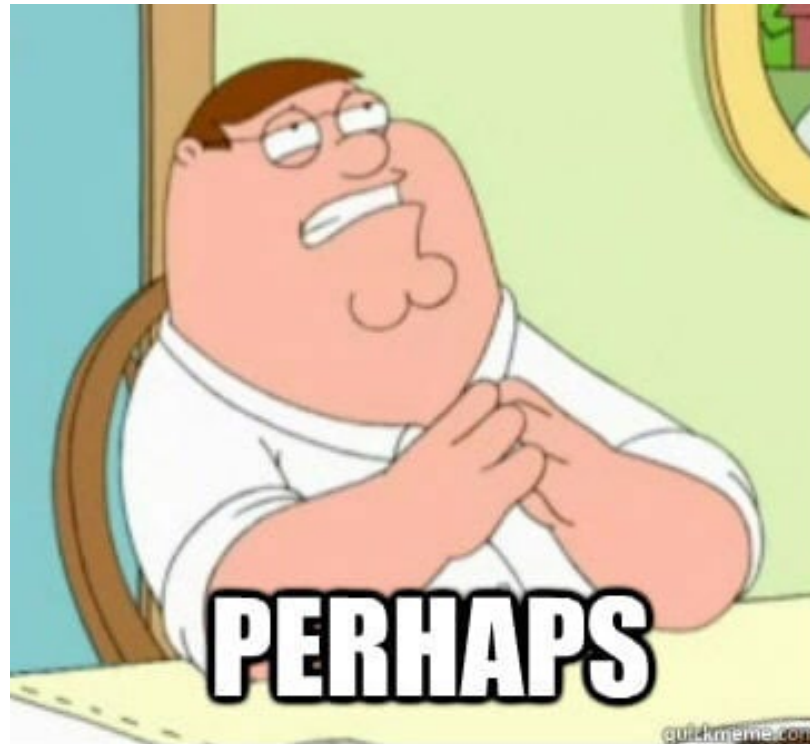
INA 212(a)(2) - Inadmissibility

- Crime of Moral Turpitude
- Multiple criminal convictions
 - Total sentence is 5 years
- Controlled Substance Trafficker
- Prostitution
- Money Laundering
- Terrorism

INA 237(a)(2) – Deportable

- Crime of Moral Turpitude
 - If conviction was within 5 years of “admission”
- Aggravated Felony
- High Speed Flight
- Controlled Substances
- Firearm Offenses
 - Selling, purchasing, possessing

Will A Conviction Affect My Client in Immigration Court?



Lawful Permanent Residents

Cancellation of Removal	Withholding of Removal	Convention Against Torture
Aggravated Felony • Yes	Aggravated Felony • Yes, if sentence of 5 years or more is imposed	Aggravated Felony • No
Deportable/Inadmissible Crime • No	Deportable/Inadmissible Crime • Yes, if it is a “particularly serious crime	Deportable/Inadmissible Crime • No

Everyone Else

Cancellation of Removal	Asylum	Withholding of Removal	Convention Against Torture
Aggravated Felony • Yes	Aggravated Felony • Yes	Aggravated Felony • Yes, if sentence of 5 years or more is imposed	Aggravated Felony • No
Deportable/ Inadmissible Crime • Yes, unless the punishment was 6 months or less	Deportable/ Inadmissible Crime • Yes, if “particularly serious crime” • Dangerous or violent crime – tough to win	Deportable/ Inadmissible Crime • Yes if it is a “particularly serious crime”	Deportable/ Inadmissible Crime • No

How do I know if ICE will detain my client?

You don't

Mandatory Detention

INA 236(c)

- Inadmissible and Deportable aliens are subject to mandatory detention
 - “When the alien is released”
 - Without regard to whether the alien is released on parole, supervised release, or probation

Why Do I Need to Have Some Understanding of Immigration Law?

Ineffective Assistance of Counsel

Competent Representation

- Rule 1.1 of the Rules of Professional Conduct provides that a lawyer shall provide competent representation to a client.
- Strickland v. Washington
 - Before deciding whether to plead guilty, a defendant is entitled to “the effective assistance of competent counsel.”
 - A client’s Sixth Amendment Right is violated when:
 - Counsel's performance fell below an objective standard of reasonableness; and
 - Counsel's performance gives rise to a reasonable probability that if counsel had performed adequately, the result would have been different

Padilla v. Kentucky

Defendants have a right to be advised as to the immigration consequences of their guilty plea

Requirements Under Padilla

- If the law is unambiguous, attorneys must advise their criminal clients that deportation will result from a conviction.
- If the immigration consequences of a conviction are unclear or uncertain, attorneys must advise that deportation "may" result.

Best Practices Tips

- Ask your client if they are a US citizen
 - If “no,” get their actual status
 - Having a work permit or being in immigration court proceedings is not a lawful status
- Assume that, at the very least, the crime is a crime involving moral turpitude
- Look at the statute, if it is clear that your client is deportable or inadmissible, tell them that
- If they have zero status, they are here unlawfully, ask them if they have ever been before an immigration judge
 - If “Yes,” ask if they have a deportation order.
 - If “Yes,” they will be deported by ICE
 - If “No,” they will go in front of an immigration judge and will have to fight to stay in the country
- Prepare a separate letter stating that you have spoken with them and that they understand that you are not an immigration attorney

More Importantly

Just ask for help