

**Defending Immigrants Partnership, California
Immigrant Legal Resource Center
February 7-8, 2003**

Agenda summary:

Welcome: 11 – 11:10 a.m.
Unit 1 and Role-play: 11:10 – 12:00
Break: 12:00 – 12:10
Unit 2 and Exercise: 12:10 – 12:50
Unit 3 Part 1: 12:50 – 1 p.m.
Lunch 1 – 2 p.m.

Day 1 Morning -- Note-Taking Guide

Unit 1: Duty to Client, Client Interview, Types of Immigration Status, Interview Roleplay (50 minutes)

Legal Duty

1. Conviction often has more serious immigration than criminal consequences

- C Loss of current lawful status and removal (deportation)
- C Loss of ability to get lawful status in future
- C Permanent banishment from U.S.
- C Federal criminal penalties for re-entry after removal 8 USC 1326

2. Must advise client and attempt to avoid the adverse immigration consequences of proposed dispositions

- C Specific analysis based on individual situation
- C People v. Soriano (1987) 194 CA3d 1470, In Re Resendiz 25 C4th 230 (2001).

3. Example of warning:

- C You have a green card and are married to a U.S. citizen. Under the plea they offered you will lose your green card. You will not be able to get another. You will be deported and probably will never be allowed to re-enter. But we could try to get another plea that at least would let you ask an immigration judge not to deport you, in an application for “cancellation of removal.” If you won that, you could keep your green card and stay. If you lost you still would be deported.

Client Interview

4. Resolve citizenship question first

- C If client is not citizen, this will be factor in making goals for

criminal case

- C Always ask the client about citizenship
- C Reassure client about confidentiality – you're not INS

5. Who is a U.S. Citizen ("USC")?

- C Can you tell by looking or listening? (no)
- C Client may not know or may be mistaken about status
- C Birth in 50 states or Puerto Rico is USC
- C Naturalized to U.S. citizenship (must not have lied)

6. Derivative/Acquired Citizenship

- C Acquired: born abroad to U.S. parent. Ask: Was parent or grandparent a USC? Then see chart
- C Derived: While defendant under 18, did (a) at least one parent naturalize and (b) def have LPR status? Then see chart

7. Identify and analyze client's individual situation

- C Complete client questionnaire
- C Photocopy any imm documents
- C Get name, permission speak to imm lawyer

8. Make specific analysis

- C Client's current imm status
- C Client's likely possibilities (e.g., married to USC? Asylum? U visa?)
- C How proposed plea specifically will cause client to lose current or potential status

9. How to make the analysis

- C Research yourself with texts
- C Consult with expert
- C Encourage client to get imm lawyer if possible

10. Talk to the Client

- C Tell client consequences in clear language
- C Devise strategy to minimize consequences
- C Ascertain client's wishes, priorities – importance of imm versus crim consequences varies among people. Client may need to choose.

Immigration Status, Vulnerability to Proceedings

11. U.S. citizen or "USC"

- C Can never be deported or refused admission
- C Citizenship can be taken only if committed fraud to naturalize (or if formally renounce)

12. Lawful permanent resident (Green card, "LPR")

- C Right to live, work permanently in US, but still vulnerable:

- Can be deported if found “deportable”
- Refused admission if “inadmissible,” in some cases
- C Can naturalize to USC if have “good moral character” and other requirements

13. Undocumented

- C May have entered without inspection (EWI)
- C May be visa overstay or entered with visa fraud
- C Can be removed if detected by INS
- C Might be eligible to apply for LPR or other status
 - Must meet grounds of inadmissibility

14. Non-Immigrant Visa

- C Professional worker (H-1), Student (F-1), etc.
- C Can be removed if deportable or if overstay or violate visa

15. Other Status

- C Lots of other temporary status: TPS, Family Unity, NACARA, etc.
- C Applicants for status may have temporary employment authorization and/or cards, while cases pending

CLIENT INTERVIEW ROLEPLAY AND DISCUSSION

BREAK (10 minutes)

Unit 2: How Immigration Law Penalizes Non-citizens With Certain Records (40 minutes)

ADIR: Aggravated Felony, Deportability Ground, Inadmissibility Ground, Relief, Exercise

1. Aggravated Felony Conviction (“AF”) 8 USC § 1101(a)(43)

- C Must be a conviction
- C Dozens of offenses, misd and felony (see list)
 - Examples: sale of marijuana, misd stat rape, assault with 1/yr sentence imposed

2. Immigration Penalties for AF Conviction

- C Deportable if convicted after admission
- C Not ground of inadmissibility per se.
- C *Bars eligibility for most relief*
 - No asylum, no “cancellation” for long-term LPR’s, no “212(h)” waiver for LPR’s

- A few loopholes
- C Illegal re-entry 20 yr federal prison sentence, 8 USC § 1326(b)(2)

3. Deportability Grounds 8 USC § 1227(a)

“If you are an LPR, you most need to avoid losing your status by becoming deportable.”

- C A noncitizen with lawful status who comes within a ground of deportability becomes “removable.” Gov’t can begin removal (deportation) proceedings. See 8 USC §§ 1229, 1229a.
- C Examples of deportability grnds: certain convictions or bad behavior; immigration violations such as admission by fraud or overstay of visa
- C INS must prove by clear and convincing evidence that person is a noncitizen and deportable
- C Deportable noncitizen still might qualify for relief from removal, esp’ly if no AF conviction

4. Example: Removal based on deportability.

- C Deportable: The BICE (formerly INS) proves that LPR is alien convicted of a domestic violence offense that makes him deportable under 8 USC § 1227(a)(2)(E).
- C Relief: Because the offense is not an aggravated felony and he meets other requirements, LPR can apply for a discretionary waiver called “cancellation of removal.” 8 USC 1229b(a).
- C Discretion, penalty: If the immigration judge grants the waiver, the noncitizen will retain LPR status and be allowed to stay. If not, the LPR will lose green card and be removed (deported.)

5. Inadmissibility Grounds 8 USC 1182(a)

“If you need something from the government – entry at the border, a green card, naturalization to U.S. citizenship – generally you need to be admissible or, if inadmissible, eligible for a waiver.”

6. Inadmissibility bars admission at the border

- C Every non-USC attempting to enter must be admissible or if inadmissible, eligible for a waiver.
- C Even LPR’s returning from a trip abroad can be refused admission if they are inadmissible for crimes, have been out of the country for over 6 months, did illegal things while gone, etc. See 8 USC 1101(a)(13)(C).

7. Inadmissibility usually bars noncitizen from obtaining LPR or other lawful status

- ☉.g., person married to USC cannot get green card if “inadmissible” (unless the person qualifies for some waiver)

8. Example of Inadmissibility grounds

- C Crimes grounds: Conviction of drug or moral turpitude offense, INS has “reason to believe” drug trafficking, engaging in prostitution, 2 or more convictions with 5 yr aggregate sentence
- C Not crimes: Not having valid immigration documents, being a current drug addict/abuser, HIV+, or poor

9. Examples of Ways to Obtain Status and/or Avoid Removal

- C More detailed discussion later in the seminar; the following are a few examples.
- C “Cancellation of removal”: Long-time permanent residents deportable for crimes can apply for discretionary waiver. Barred by aggravated felony conviction
- C Family immigration: Undoc or others with citizen or permanent resident close family can become permanent residents, barred if inadmissible
- C VAWA: Immigrants abused by citizen or permanent resident spouse or parent can apply for relief if not inadmissible, some waivers

10. Bottom Line Goals for Criminal Defense:

- C All noncitizens want to avoid conviction of an aggravated felony
- C LPR’s most want to avoid the grounds of deportability
- C Altho undoc can be removed, they still need to avoid aggravated felonies and the grounds of inadmissibility in case they could apply for some status.
- C Anyone – EWI or LPR -- who needs to apply for something from the gov’t (application for LPR or other status, admission at a border, new lawful status, naturalization to U.S. citizenship) wants to avoid the crimes grnds of inadmissibility.
- C Grounds of deportability are irrelevant to EWI’s (except those who may apply for non-LPR cancellation)

Exercise 1: Deportability, Inadmissibility and Aggravated Felonies (see materials)

**Unit 3, Part I Introduction to the Client Immigration
Questionnaire and Analysis; Assignment (10 minutes)**

1. What each noncitizen defendant needs

- C Three kinds of data are needed to analyze the immigration consequences of a particular conviction
- C Some facts about the defendant's immigration situation , obtained by completing the "Client Immigration Questionnaire"
- C Photocopy of client's imm. documents, if any, and
- C Complete criminal history, including convictions, date offense committed, sentence, post-con relief

2. Client Immigration Questionnaire

- C Captures information needed to analyze imm situation
- C You can use completed questionnaire to do your own analysis, or give to the imm atty who makes the analysis

3. Completing the Client Questionnaire

- C Complete Imm. Questionnaire for each noncitizen defendant
- C **Practice tip:** Paralegals or intake workers can do this
- C **Practice tip:** Print the Imm Questionnaire on colored paper to flag the issue for each succeeding atty on the case

4. Assignment:

- C **Over lunch, please complete the immigration questionnaire provided with your materials.** Use the facts set out in Day 1 Exercise 2 ("Juan Primo"), page xx. Use an additional piece of paper to write out the chronology of the criminal and immigration events in the case.
- C An additional blank copy of the Questionnaire for you to take back to your office appears at page xxx.