

CRIMMIGRATION LAW 101

The intersection of criminal and immigration law has been artfully termed "cimmigration"



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CRIMMIGRATION LAW 101

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CRIMMIGRATION LAW 101

DEPORTATION MAY  
"RESULT IN THE LOSS  
OF ALL THAT MAKES  
LIFE WORTH LIVING"

Yik Wo , 118 US, 639 (1896)

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## CRIMMIGRATION LAW 101

### AGENDA

- ▶ Duties of Criminal Defense Counsel
- ▶ Grounds of Deportability
- ▶ ICE Priorities, Misdemeanors and DUI
- ▶ "Deportation-Safe" Plea Agreements
- ▶ Collateral Attacks

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## CRIMMIGRATION LAW 101

### DUTIES OF CRIMINAL COUNSEL

- *Padilla v. Kentucky* – Raised the bar for Defense Counsel
- What is the Scope of these Duties? – Over Advise/Under Advise/Ineffective Assistance/Bargaining Position
  - Ethical Duty of Competence

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## CRIMMIGRATION 102

### WHAT IS A "CONVICTION FOR IMMIGRATION PURPOSES"?

- ▶ Statutory Definition at INA § 101(a)(48) –
- ▶ 1) judgment of guilt by court, or
- ▶ 2) if adjudication of guilt is withheld—

Judge or jury finds guilty, person admits guilt, or person enters *nolo contendere*, person admits sufficient facts and some form of punishment.

Suspended sentence=term of imprisonment

Confinement in Drug Rehab Facility=Confinement

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## CRIMMIGRATION LAW 101

### GROUND OF INADMISSIBILITY AND REMOVABILITY

- Definitions: Immigration and Nationality Act
  - INA §§ 212 and 237
- Admitted Aliens & "Admissibility"
- Grounds of Removability
  - "Relief" from Removal

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## CRIMMIGRATION LAW 101

### CRIMES INVOLVING MORAL TURPITUDE

- ▶ CIMT Definition? - Sources of Law – generally includes crimes that are inherently base, vile, and counter to accepted rules of morality
  
- ▶ Render aliens Inadmissible and Removable
  
- ▶ Applications for Relief - Waiver?

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## CRIMMIGRATION LAW 101

### AGGRAVATED FELONY

- ▶ Definition – INA § 101(a)(43)(A)-(U)
- ▶ State Law Misdemeanor=Aggravated Felony?
- ▶ Custody - Mandatory Detention and "Joseph Hearings"
  - ▶ Criminal Re-Entry Penalty - § 1326(a) or (b)

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## CRIMMIGRATION LAW 101

### ICE PRIORITIES

- ▶ Mandate/funding for 400,000? Who are the Priorities?
- ▶ Deferred Action Status/Stays of Removal?
- ▶ Exercise of Discretion
- ▶ How to Mess Up Your Client With DACA/TPS: DUI, Domestic Violence, Controlled Substances...
- ▶ New Administration Unknowns

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## CRIMMIGRATION LAW 101

### MISSISSIPPI CRIMES

- ▶ DV Offenses
  - ▶ Driving Under the Influence
  - ▶ Drug-Related Offenses
    - ▶ Fraud
- ▶ Don't Forget Firearms Offenses
  - ▶ "Non-adjudication"

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## CRIMMIGRATION LAW 101

### DOMESTIC VIOLENCE AND VIOLATION OF PROTECTIVE ORDER

- A non-citizen is deportable if convicted of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment, whether felony or misdemeanor.  
INA § 237(a)(2)(E)
- A non-citizen is also deportable if enjoined by a protective order and found by a civil or criminal court to have violated the portion of a protective order that protects against credible threats of violence, repeated harassment, or bodily injury. INA § 237(a)(2)(E)(ii)

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## CRIMMIGRATION 102

### EXPUNGEMENTS, SIS, AND OTHER DISMISSALS REMAIN "CONVICTIONS FOR IMMIGRATION PURPOSES"

- ▶ SIS, Deferred Adjudications & "Diversion"
- ▶ Expungements Do Not Exist
- ▶ *Vacatur* – See *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003)
- ▶ Pardons – Must be President or Gubernatorial and only waives certain convictions

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## CRIMMIGRATION 102

### POST-CONVICTION RELIEF

- ▶ *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003)
- ▶ Held: If a court vacates an alien's conviction for reasons solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings, the conviction is not eliminated for immigration purposes
- ▶ **BUT:** If a court vacates an alien's conviction for reasons related to IAC for failure to advise of immigration consequences, the conviction would be eliminated for immigration purposes, as it is a substantive defect.

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## CRIMMIGRATION 102

### SAFE HAVEN PLEA AGREEMENTS

- ▶ Client Avoids Deportation
- ▶ Client Avoids Becoming a Removal Priority
- ▶ Client Preserves Future Immigration Eligibility
- ▶ Judicial Economy
- ▶ Scope of Duty: *Warn v. Avoid*




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## CRIMMIGRATION LAW 101

### THE NEW CLIMATE: IMMIGRATION-SAFE PLEA NEGOTIATIONS AND "CONVICTION" AVOIDANCE

- ▶ Benefits to the Defendant
- ▶ Benefits to the State and Judiciary
- ▶ Best Practices/Strategies – *Padilla* Opinions

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CRIMMIGRATION  
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CLOSING  
REMARKS

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