

Hot Topics in Crim-Imm



Moderator:

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Panelists:

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Impact of the Election on Noncitizens with Criminal Histories



- Executive Orders
 - Travel Ban
 - Border Security
 - Interior Enforcement

Impact of the Election (cont.)



Interior Enforcement Exec Order (1/25/17)

- Increase 287(g) and state & local cooperation
- Withdraw federal grant \$ for “sanctuary cities”
- Reinstate Secure Communities
- More detention & ICE officers
- Collect and report on imm status of those charged with and convicted of crimes
- Expands enforcement priorities

New Enforcement Priorities per 1/25/17 Exec Order



Anyone who is ***already removable*** (except overstays?) ***and***

- Convicted of any crime
- Charged with any crime (whether or not still pending?)
- Committed acts that constitute crime

New Enforcement Priorities per 1/25/17 Exec Order (cont.)



Anyone who is ***already removable*** (except overstays?) ***and***

- Final order but failed to deport
- Fraud or misrepresentation on any matter or application with govt agency
- Abused public benefits program
- Any immigration officer thinks public safety or national security risk

Impact on advising noncitizen clients with criminal histories



- Most significant change for those without lawful status
 - Be careful about filing applications
 - Preserve DACA & TPS eligibility
- New diplomatic pressure and repatriation agreements?
- Increased use of expedited removal, IRH, admin removal?

Crim-Imm Case Law Updates



Mathis v. United States,
No. 15-6092, 195 L. Ed. 2d 604 (U.S. June 23, 2016)

- Means vs. Elements
- Affirming strict elements-based approach
- Matter of Chairez-Castrejon, 26 I&N Dec 819 (BIA 2016), adopting Mathis

Crim-Imm Case Law (cont.)



Sauceda v. Lynch,
No. 14-2042, 2016 U.S. App. LEXIS 7352
(1st Cir. Apr. 22, 2016)

- Is a conviction for assault under Maine statute 17-A, § 207(1)(A) a crime of domestic violence?
- Application of *Moncrieffe*
- Least of the acts criminalized

Crim-Imm Updates (cont.)



Whyte v. Lynch, 807 F.3d 463 (1st Cir. 2015)

- Is a statute that punishes a person who “with intent to cause physical injury to another person, [] causes such injury to such person or to a third person” a “crime of violence” as defined at 18 U.S.C. § 16?
- What constitutes violent force?

Remember Definition of COV at 18 U.S.C. § 16



The definition of “crime of violence” is :

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) 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.

Crim-Imm Updates (cont.)



Matter of Silva-Trevino, 26 I&N Dec. 826 (BIA 2016) (“Silva-Trevino III”)

- The categorical approach and CIMTs
- Realistic Probability test
- Modified categorical approach
- Application to Mr. Silva Trevino
- No heightened discretionary standard

Minimizing Immigration Consequences of Criminal Conduct



LPR/other lawful status

- Avoid removability
- Preserve relief

Undocumented

- Already priority if in criminal ct.
- Preserve relief or future pathway to status.

***Minimizing Immigration
Consequences of Criminal Conduct***



Pre-trial strategies

- Safer offenses
- Record of conviction – docket sheet
- Avoid one year sentence for sentence-based agg fels

***Minimizing Immigration
Consequences of Criminal Conduct***



Pre-trial strategies

- Avoid conviction
 - Pre-trial probation
 - Guilty filed?
 - ~~CWOF~~

***Minimizing Immigration
Consequences of Criminal Conduct***



Post-conviction strategies

- **IAC based on Padilla**
 - **Deficient performance of trial atty**
 - **Prejudice**

***Minimizing Immigration
Consequences of Criminal Conduct***



Post-conviction strategies

- **Judicial warning statutes**
 - **Violation + prejudice**
 - **MA G.L. ch. 278, § 29D**
 - **Conn. Gen. Stat. § 54-1j**
 - **R.I. Gen. Laws § 12-12-22**

***Minimizing Immigration
Consequences of Criminal Conduct***



Post-conviction strategies

- **Other non-immigration grounds**
 - **New evidence**
 - **Plea not knowing and voluntary**
 - **IAC for failure to invest, pursue alibi, file pre-trial motions, etc.**



**OBTAINING
RESULTS INSIDE
THE CRIMINAL
JUSTICE SYSTEM**

Vocabulary and Concepts



- District vs. Superior Court
- Misdemeanor vs. Felony
- Green Sheets and Charge Concessions
- Bar Advocates
- Clerks

Before Arraignment



1. Bail
2. District Attorney
3. Diversion
4. Clerk-Magistrate Hearing

At Arraignment and Beyond



- Who needs to get arraigned?
- Is there a bad time to negotiate?
- Why wait for a pretrial date?

Making the Most of the Process



- Time is Fluid
- Hearts and Minds
- Numbers
- Be the Active Attorney